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THE
INDIAN COUNCILS ACTS,
1861, 1871, 1874 AND 1892,
AND THE
GOVERNMENT OF INDIA ACT, 1870,
WITH THE
RULES OF BUSINESS, ETC.



SIMLA :
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PREFATORY NOTE.

The Rules of Business, both executive and legislative, for the making of which ss. 8 and 18 of the Indian Councils Act, 1861, provide, have recently* been revised, and certain further instructions have been issued for the guidance of Secretariat Officers and Local Governments. These and the Indian Councils Acts of 1861, 1871, 1874 and 1892, and the Government of India Act, 1870, have been brought together in this compilation.

2. Some notes and explanatory appendices to the Statutes and the Rules of Legislative Business have been added, many of the former being mere references to Sir Courtenay Ilbert's lately published work, *The Government of India*.

LEGISLATIVE DEPARTMENT; }
The 7th October, 1898. }

H. W. C. C.

* The executive rules and instructions for the Secretariat were re-issued on the 19th August, 1898, and the orders to Local Governments on the 6th October, 1898. The legislative rules had been revised early in the preceding year, *viz.*, on the 4th February, 1897.

THE INDIAN COUNCILS ACT, 1861 (24 & 25
VICT., c. 67).

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THE INDIAN COUNCILS ACT, 1861 (24 & 25 VICT., c. 67).

An Act to make better provision for the constitution of the Council of the Governor General of India, and for the Local Government of the several Presidencies and Provinces of India, and for the temporary Government of India in the event of a Vacancy in the Office of Governor General.

[1ST AUGUST, 1861.]

[*Preamble rep. 55 & 56 Vict., c. 19 (S.L.R.).*]

1. This Act may be cited for all purposes as "The Short title. Indian Councils Act, 1861."

This Act and the Indian Councils Act, 1892 (55 & 56 Vict., c. 14), may be cited together as the Indian Councils Acts, 1861 and 1892—see the Indian Councils Act, 1892, s. 8, *post*, p. 38.

As to this Statute generally, see *Ilbert*, pp. 102—106. For the Secretary of State's despatch accompanying it, see App. II, *post*, pp. 99—108.

2. * * * All other enactments whatsoever now in force with relation to the Council of the Governor General of India, or to the Councils of the Governors of the respective Presidencies of Fort St. George and Bombay, shall, save so far as the same are altered by or are repugnant to this Act, continue in force, and be applicable to the Council of the Governor General of India and the Councils of the respective Presidencies under this Act.

The earlier part of this section repealed certain enactments and was itself repealed by 55 & 56 Vict., c. 19 (S.L.R.).

3. There shall be five ordinary members of the said Council of the Governor General, three of whom shall from time to time be appointed * * * from among such persons as shall have been, at the time of such appointment, in the service in India of the Crown or of the Company and the Crown for at least ten years, and if the person so appointed shall be in the military service of the Crown, he shall not, during his continuance in office as a member of Council, hold any military command, or be employed in actual military duties, and the remaining two, one of whom shall be a barrister or a member of the Faculty of Advocates in Scotland of not less than five years' standing, shall be appointed from time to time by Her Majesty by warrant under Her Royal Sign Manual;

and it shall be lawful for the Secretary of State in Council to appoint the Commander-in-Chief of Her Majesty's Forces in India to be an extraordinary member of the said Council, and such extraordinary member of Council shall have rank and precedence at the Council Board next after the Governor General.

Enactments continued in force.

Composition of the Council of the Governor General of India.

The number of members may be increased to six—see the Indian Councils Act, 1874, s. 1, *post*, p. 31.

The words "by the Secretary of State for India in Council, with the concurrence of a majority of members present at a meeting," were repealed by 41 & 42 Vict., c. 79 [S.L.R.].

The Secretary of State in his despatch No. 66 (Military), dated the 30th June, 1898, intimated that he did not propose in future to appoint an officer temporarily acting as Commander-in Chief to be an Extraordinary Member of Council. The same despatch laid down the lines on which provisional appointments to the post of Commander-in-Chief should be made.

For form of notification appointing an Ordinary Member of Council, see App. VII, No. 1, *post*, p. 122.

For a digest of, and critical notes on, this section, see *Libert*, pp. 180, 181.

Present members of Council to continue.

Appointment of fifth member and salaries of members, etc.

Provisional appointments of members of Council.

4. The present ordinary members of the Council of the Governor General of India shall continue to be ordinary members under and for the purposes of this Act, and it shall be lawful for Her Majesty to appoint by warrant as aforesaid an ordinary member of Council to complete the number of five hereby established;

and there shall be paid to such ordinary member and to all other ordinary members who may be hereafter appointed, such amount of salary as may from time to time be fixed for members of the Council of the Governor General by the Secretary of State in Council with the concurrence of a majority of members of Council present at a meeting;

and all enactments of any Act of Parliament or law of India respecting the Council of the Governor General of India and the members thereof shall be held to apply to the said Council as constituted by this Act, except so far as they are repealed by or are repugnant to any provisions of this Act.

The maximum salary of an Ordinary Member of Council was, by s. 76 of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), fixed at "ninety-six thousand and sicca rupees," subject to such reduction as the Court of Directors, with the sanction of the Board of Control, might at any time think fit. The power to reduce had been exercised more than once, and the salary stood at Rs. 76,800 *per annum* in 1898, when the Secretary of State, acting, with the advice of the Law Officers, on the view—formerly regarded as doubtful—that the power to reduce involved a power to raise subsequently, increased it to Rs. 80,000. See para. 6 of despatch from the Secretary of State, No. 69 (Financial), dated the 7th April, 1898.

As to allowances for equipment and voyage, see the Indian Salaries and Allowances Act, 1880 (43 & 44 Vict., c. 3), s. 3.

This section, except in so far as it relates to salaries, is *spent*. For digest and notes, see *Libert*, pp. 227, 315.

5. It shall be lawful for the Secretary of State in Council, with the concurrence of a majority of members present at a meeting, and for Her Majesty, by warrant as aforesaid, respectively, to appoint any person provisionally to succeed to the office of ordinary member of the Council of the Governor General, when the same shall become vacant by the death or resignation of the person holding the said office, or on his departure from India with intent to return to Europe, or on any event and contingency expressed in any such provisional appointment and such appointment again to revoke;

but no person so appointed to succeed provisionally to such office shall be entitled to any authority, salary, or

emolument appertaining thereto until he shall be in the actual possession of such office.

Such appointments are now made by Her Majesty by warrant under Her Royal Sign Manual—see s. 8 of the Government of India Act, 1869 (32 & 33 Vict., c. 97).

For form of notification making a provisional appointment, see App. VII, No. 2, *post*, p. 122. For digest and notes, see *Ilbert*, p. 232.

6. Whenever the said Governor General in Council shall declare that it is expedient that the said Governor General should visit any part of India unaccompanied by his Council, it shall be lawful for the said Governor General in Council, previously to the departure of the said Governor General, to nominate some member of the said Council to be president of the said Council, in whom, during the time of such visit, the powers of the said Governor General in assemblies of the said Council shall be reposed except that of assenting to or withholding his assent from, or reserving for the signification of Her Majesty's pleasure, any law or regulation as hereinafter provided ;

Provisions during absence of Governor General in other parts of India.

and it shall be lawful in every such case for the said Governor General in Council, by an order for that purpose to be made, to authorize the Governor General alone to exercise all or any of the powers which might be exercised by the said Governor General in Council in every case in which the said Governor General may think it expedient to exercise the same, except the power of making laws or regulations.

For digest and notes, see *Ilbert*, p. 187.

7. Whenever the Governor General, or such president so nominated as aforesaid, shall be obliged to absent himself from any meeting of Council (other than meetings for the purpose of making laws and regulations, as hereinafter provided), owing to indisposition or any other cause whatsoever, and shall signify his intended absence to the Council, then and in every such case the senior member for the time being who shall be present at such meeting shall preside thereat, in such manner, and with such full powers and authorities during the time of such meeting as such Governor General or president would have had in case he had been present at such meeting :

Provisions in case of absence of Governor General, etc., from meeting of Council.

Provided always, that no Act of Council made at any such meeting shall be valid to any effect whatsoever unless the same shall be signed by such Governor General or president, respectively, if such Governor General or president shall at the time be resident at the place at which such meeting shall be assembled, and shall not be prevented by such indisposition from signing the same :

Provided always that in case such Governor General or president, not being so prevented as aforesaid, shall decline or refuse to sign such Act of Council, he, and the several members of Council who shall have signed the same, shall mutually exchange with and communicate in writing to each other the grounds and reasons of their respective opinions, in like manner and subject to such regulations and ultimate responsibility as are by an

Act of the thirty-third year of King George the Third, 33 Geo. 3 c. Chapter fifty-two,* sections forty-seven, forty-eight, forty-nine, fifty and fifty-one, provided and described in cases where such Governor General shall, when present, dissent from any measure proposed or agitated in the Council. 52, ss. 47 to 51.

For digest and note, see *Ilbert*, pp. 187—188.

Power of Governor General to make rules for conduct of business.

8. It shall be lawful for the Governor General from time to time to make rules and orders for the more convenient transaction of business in the said Council; and any order made or act done in accordance with such rules and orders (except as hereafter provided respecting laws and regulations) shall be deemed to be the order or act of the Governor General in Council.

This power is conferred on the Governor General in person. For the existing rules made under it, see *post*, pp. 45—62. These have not been made public as yet, but in their present form they appear to contain no matter of a private or confidential character. All such matter has, indeed, been excluded advisedly and issued as *Secretariat Instructions*, for which see *post*, pp. 63—70. For digest, see *Ilbert*, p. 183.

Council where to assemble.

9. The said Council shall from time to time assemble at such place or places as shall be appointed by the Governor General in Council within the territories of India;

and as often as the said Council shall assemble within either of the Presidencies of Fort St. George or Bombay, the Governor of such Presidency shall act as an extraordinary member of Council;

and as often as the said Council shall assemble within any other division, province, or territory having a Lieutenant-Governor, such Lieutenant-Governor shall act as an additional councillor at meetings of the Council for the purpose of making laws and regulations only, in manner hereinafter provided

The expression "Additional Councillor" is here used instead of "Additional Member." See note to s. 45, *post*, p. 22.

The Governor General's Executive Council now assembles regularly at Calcutta and Simla. Cf. note to section 17, *post*, p. 10. For form of notification convening it, see App. VII, No. 5, *post*, p. 123.

As to other Lieutenant Governors and Chief Commissioners, see the Government of India Act, 1870, s. 3, *post*, pp. 42—43. For digest, see *Ilbert*, pp. 182 and 204.

Additional members to be summoned for the purpose of making laws and regulations.

10. For the better exercise of the power of making laws and regulations vested in the Governor General in Council, the Governor General shall nominate, in addition to the ordinary and extraordinary members above mentioned, and to such Lieutenant-Governor in the case aforesaid, such persons ~~not less than six nor more than twelve in number~~, as to him may seem expedient, to be members of Council for the purpose of making laws and regulations only, and such persons shall not be entitled to sit or vote at any meeting of Council, except at meetings held for such purpose:

Provided that not less than one-half of the persons so nominated shall be non-official persons, that is, persons who, at the date of such nomination, shall not be in the civil or military service of the Crown in India; and

that the seat in Council of any non-official member accepting office under the Crown in India shall be vacated on such acceptance.

The number of Additional Members is now not less than ten nor more than sixteen—see the Indian Councils Act, 1892, s. 1 (1), *post*, p. 35. This maximum does not include a Lieutenant-Governor or Chief Commissioner when sitting *ex officio* in pursuance of s. 3 of the Government of India Act, 1870, *post*, pp. 42–43. For digest, see *Ilbert*, pp. 199–200.

As to the allowances of Additional Members, see *Civil Service Regulations*, Arts. 599 and 1282; also Legislative Department's B. Pros. March, 1893, No. 93; November, 1894, Nos. 6–9; May, 1895, Nos. 219–224; and C. R. No. 2391 of 1898.

An Additional Member selected for his knowledge of a particular province is not the representative or mouthpiece of the administration of that province; and the Local Government of that province and its subordinate officers do not correspond with him officially on matters of legislation. See para. 3 of Legislative Department's letter to the Government of Bengal, No. 1527, dated the 13th December, 1878—*Selection of Papers relating to the Constitution and Functions of the Indian Legislative Councils*, at p. 278. For forms of notifications making appointments under this section, see App. VII, Nos. 7 and 8, *post*, p. 124. For digest, see *Ilbert*, p. 200.

II. Every additional member of Council so nominated shall be summoned to all meetings held for the purpose of making laws and regulations for the term of two years from the date of such nomination. Such members to be appointed for two years.

On several occasions officials have been appointed Additional Members on the understanding that they will resign before the expiration of the two years fixed by this section. See Legislative Department's Unofficial Reference No. 314 of 1897.

The practice is to summon the Members at the beginning of each session; but in the case of the Simla session, the Additional Members are, unless their presence is specially desired, told demi-officially that they need not attend. As to the supply of agenda lists, see *post*, p. 86.

For form of summons, see App. VII, No. 10, *post*, p. 125. For digest, see *Ilbert*, p. 200.

12. It shall be lawful for any such additional member of Council to resign his office to the Governor General, and, on acceptance of such resignation by the Governor General, such office shall become vacant. Resignation of additional members.

It will be observed that there is no provision for the grant of leave to Additional Members as such. When such a Member is an official, the practice is for the Local Government under which he is serving, to grant him leave under the ordinary rules; but see para. 5 of Legislative Department's letter No. 1527, dated the 13th December, 1878—*Selection of Papers relating to the Constitution and Functions of the Indian Legislative Councils*, at p. 278.

In practice Additional Members frequently leave India during the Simla session, the permission of the Governor General being, as a rule, formally asked for. As to the absence of Additional Members, see s. 4 of the Indian Councils Act, 1892, *post*, pp. 37–38. For form of notification accepting the resignation of an Additional Member, see App. VII, No. 9, *post*, p. 125. For digest, see *Ilbert*, p. 236.

13. [Rep. 55 & 56 Vict., c. 14, s. 4]

The provision here made for filling up vacancies in the number of Additional Members has been replaced by the repealing enactment, s. 4 of the Indian Councils Act, 1892, *post*, pp. 37–38.

14. No law or regulation made by the Governor General in Council, in accordance with the provisions of this Act, shall be deemed invalid by reason only that the proportion of non-official additional members hereby provided was not complete at the date of its introduction to the Council or its enactment. No law to be invalid by reason of number of non-official members being incomplete.

Cf. s. 33, *post*, p. 7. For digest, see *Ilbert*, p. 226.

Senior
ordinary
member of
Council to
preside at
meetings for
making laws
and
regulations
in absence of
Governor
General, etc.
Quorum.

15. In the absence of the Governor General and of the president, nominated as aforesaid, the senior ordinary member of the Council present shall preside at meetings of the Council for making laws and regulations ;

and the power of making laws and regulations vested in the Governor General in Council shall be exercised only at meetings of the said Council at which such Governor General or president or some ordinary member of Council and six or more members of the said Council (including under the term members of the Council such additional members as aforesaid), shall be present ;

and in every case of difference of opinion at meetings of the said Council for making laws and regulations where there shall be an equality of voices, the Governor General, or in his absence the president, and in the absence of the Governor General and president such senior ordinary member of Council there presiding, shall have two votes or the casting vote.

For digest, see *Ilbert*, p. 201.

16. [*Rep. 55 & 56 Vict., c. 19 (S.L.R.).*]

This section provided for the first meeting for making laws and regulations and the exercise of legislative powers until that meeting. It was repealed as being spent.

Power to ap-
point and
adjourn meet-
ings for
making laws
and regula-
tions.

17. It shall be lawful for the Governor General in Council from time to time to appoint all * * times and places of meeting of the Council for the purpose of making laws and regulations under the provisions of this Act, and to adjourn, or from time to time to authorize such president, or senior ordinary member of Council in his absence, to adjourn, any meeting for the purpose of making laws and regulations from time to time and from place to place.

The word "other" was repealed by 55 & 56 Vict., c. 19 (S.L.R.).

The practice is for the Governor General's Legislative Council to assemble in Calcutta in December or January, to be adjourned *sine die* in March, to assemble again at Simla in the Punjab in June or July, and to be once more adjourned indefinitely in October or November. For form of notification convening it, see App VII, No. 6, *post*, pp. 123-124. For digest, see *Ilbert*, pp. 200-201.

Rules for con-
duct of busi-
ness at such
meetings.

18. It shall be lawful for the Governor General in Council to make rules for the conduct of business at meetings of the Council for the purpose of making laws and regulations under the provisions of this Act, prior to the first of such meetings ;

but such rules may be subsequently amended at meetings for the purpose of making laws or regulations, subject to the assent of the Governor General ;

and such rules shall prescribe the mode of promulgation and authentication of such laws and regulations :

Provided always that it shall be lawful for the Secretary of State in Council to disallow any such rule, and to render it of no effect.

For the rules made under this section, see *post*, pp. 77-88. For digest see *Ilbert*, p. 213.

19. No business shall be transacted at any meeting for the purpose of making laws and regulations (except as last hereinbefore provided) other than the consideration and enactment of measures introduced into the Council for the purpose of such enactment, and it shall not be lawful for any member or additional member to make, or for the Council to entertain, any motion, unless such motion be for leave to introduce some measure as aforesaid into Council, or have reference to some measure actually introduced thereinto:

Business to be transacted at such meetings.

Provided always that it shall not be lawful for any member or additional member to introduce, without the previous sanction of the Governor General, any measure affecting—

1st. The public debt or public revenues of India, or by which any charge would be imposed on such revenues;

2nd. The religion or religious rites and usages of any class of Her Majesty's subjects in India:

3rd. The discipline or maintenance of any part of Her Majesty's military or naval forces:

4th. The relations of the Government with foreign princes or states.

The provisions of this section have been modified by the Indian Councils Act, 1892, s. 2, *post*, p. 30, which provides for the discussion of Annual Financial Statements and the asking of questions in the Legislative Councils. For digest, see *Ilbert*, pp. 11, 212.

20. When any law or regulation has been made by Council at a meeting for the purpose of making laws and regulations as aforesaid, it shall be lawful for the Governor General, whether he shall or shall not have been present in Council at the making thereof, to declare that he assents to the same, or that he withholds his assent from the same, or that he reserves the same for the signification of the pleasure of Her Majesty thereon;

Assent of Governor General to laws and regulations made at such meetings.

and no such law or regulation shall have validity until the Governor General shall have declared his assent to the same, or until (in the case of a law or regulation so reserved as aforesaid) Her Majesty shall have signified Her assent to the same to the Governor General, through the Secretary of State for India in Council, and such assent shall have been duly proclaimed by the said Governor General.

These powers are conferred on the Governor General in person. There is no limit of time within which assent must be given, and it has been delayed pending a reference to the Secretary of State—see Legislative Department's Unofficial Reference No. 275 of 1898.

The power of reserving a law or regulation for the signification of Her Majesty's pleasure therein has apparently never been used.

For form of recording assent, see App. VII, No. 11, *post*, p. 126. For digest, see *Ilbert*, p. 212.

21. Whenever any such law or regulation has been assented to by the Governor General, he shall transmit to the Secretary of State for India an authentic copy thereof;

Power of the Crown to disallow laws and regulations made at such meetings.

and it shall be lawful for Her Majesty to signify, through the Secretary of State for India in Council, Her disallowance of such law;

and such disallowance shall make void and annul such law from or after the day on which the Governor General shall make known, by proclamation or by signification, to

his Council that he has received the notification of such disallowance by Her Majesty.

This power of disallowance has apparently never been used; but in 1877 the Secretary of State intimated that he would find it difficult to consent to the enactment of the Code of Civil Procedure as it repealed the Lord's Day Act (29 Car., c. 7), and suggested the passing of a short Act with reference thereto. See Legislative Department's Press, July, 1877, Nos 50 and 51, and Press, March, 1879, Nos. 1—7.

When an Act has been passed by the Governor General in Council the Secretary of State usually sends a despatch intimating that it has been considered by him in Council and will be left to its operation. But such a formal expression of approval is clearly not essential to its validity. For digest, see *libert*, pp. 212, 213.

Extent of the powers of the Governor General in Council to make laws and regulations at such meetings.

22. The Governor General in Council shall have power at meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions herein contained, to make laws and regulations for repealing, amending, or altering any laws or regulations whatever, now in force or hereafter to be in force in the Indian territories now [or hereafter] under the dominion of Her Majesty, and to make laws and regulations for all persons, whether British or Native, foreigners or others, and for all courts of justice whatever, and for all places and things whatever, within the said territories, and for all servants of the Government of India within the dominions of princes and states in alliance with Her Majesty;

and the laws and regulations so to be made by the Governor General in Council shall control and supersede any laws and regulations in anywise repugnant thereto which shall have been made prior thereto by the Governors of the Presidencies of Fort St. George and Bombay respectively in Council, or the Governor or Lieutenant-Governor in Council, of any presidency or other territory for which a Council may be appointed, with power to make laws and regulations under and by virtue of this Act:

Provided always, that the said Governor General in Council shall not have the power of making any laws and regulations which shall repeal or in any way affect any of the provisions of this Act:

Or any of the provisions of the Acts of the third and fourth years of King William the Fourth, chapter 85*, and of the sixteenth and seventeenth years of Her Majesty, chapter 95†, and of the seventeenth and eighteenth years of Her Majesty, chapter 77‡, which after the passing of this Act shall remain in force:

Or any provisions of the Act of the twenty-first and twenty-second years of Her Majesty, chapter 106, entitled *an Act for the better Government of India*§; or of the Act of the twenty-second and twenty-third years of Her Majesty, chapter 41||, to amend the same:

Or of any Act enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India:

* *i.e.*, the Government of India Act, 1833.✓

† *i.e.*, the Government of India Act, 1853.

‡ *i.e.*, the Government of India Act, 1854.

§ *i.e.*, the Government of India Act, 1858.

|| *i.e.*, the Government of India Act, 1859.

Or of the Acts for punishing mutiny, and desertion in Her Majesty's army or in Her Majesty's Indian forces respectively ; but subject to the provision contained in the Act of the third and fourth years of King William the Fourth, chapter 85*, section 73, respecting the Indian Articles of War :

Or any provisions of any Act passed in this present session of Parliament, or hereafter to be passed, in anywise affecting Her Majesty's Indian territories, or the inhabitants thereof :

Or which may affect the authority of Parliament, or the constitution and rights of the East India Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the Crown over any part of the said territories.

The words "or hereafter" were inserted, with retrospective effect, by the Indian Councils Act, 1892, s. 3, *post*, p. 37.

As to the words "all courts of justice whatever," see App. VIII, *post*, pp. 139-145.

The word "affect" has been construed to mean "affect prejudicially" or "affect in *malam partem*."

The bar here imposed has been removed as regards sections 81 to 86 (both inclusive) of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85) by the Indian Councils Act, 1869 (32 & 33 Vict., c. 98), s. 3.

It should be noted that any Act giving power to any Court, other than a Chartered High Court, to sentence European British subjects to death requires the previous sanction of the Secretary of State in Council—see the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), s. 36; also the Indian Marine Service Act, 1884 (47 & 48 Vict., c. 38), s. 5.

Further powers have been conferred by the Government of India Act, 1865 (28 & 29 Vict., c. 17), s. 1, and the Indian Councils Act, 1869 (32 & 33 Vict., c. 9), s. 1. The former empowers the Governor General in Council "to make laws and regulations for all British subjects of Her Majesty within the dominions of princes and states in India in alliance with Her Majesty, whether in the service of the Government of India or otherwise:" and the latter "for all persons being native Indian subjects of Her Majesty, Her heirs and successors, without and beyond as well as within the Indian territories under the dominion of Her Majesty."

The East India Company was not dissolved till 1874.

For digest and further notes, see *Ilbert*, pp. 201-211. See also Mr. Chalmers' *General Clauses Act*, 1897, pp. 50-52.

23. Notwithstanding anything in this Act contained, it shall be lawful for the Governor General, in cases of emergency, to make and promulgate from time to time ordinances for the peace and good government of the said territories or of any part thereof, subject however to the restrictions contained in the last preceding section ;

and every such ordinance shall have like force of law with a law or regulation made by the Governor General in Council as by this Act provided, for the space of not more than six months from its promulgation, unless the disallowance of such ordinance by Her Majesty shall be earlier signified to the Governor General by the Secretary of State for India in Council, or unless such ordinance shall be controlled or superseded by some law or regulation made by the Governor General in Council at a meeting for the

Governor General may make ordinances having force of law in cases of urgent necessity.

* i.e., the Government of India Act, 1833.

purpose of making laws and regulations as by this Act provided.

For an example of a notification making and promulgating an ordinance under this section, see App. VII, No. 13, *post*, p. 127. For digest and notes, see *Ilbert*, p.^s 215.

No law, e'tc., invalid by reason of it affecting any prerogative of the Crown.

24. No law or regulation made by the Governor General in Council (subject to the power of disallowance by the Crown, as hereinbefore provided) shall be deemed invalid by reason only that it affects the prerogative of the Crown.

There is no such saving as regards the Acts of local legislatures. For digest and further notes, see *Ilbert*, p. 226.

Laws made for the non-regulation provinces declared valid.

25. Whereas doubts have been entertained whether the Governor General in India, or the Governor General of India in Council, had the power of making rules, laws, and regulations for the territories known from time to time as "non-regulation provinces," except at meetings for making laws and regulations, in conformity with the provisions of the said Acts of the third and fourth years of King William the Fourth, chapter 85,* and of the sixteenth and seventeenth years of Her Majesty, chapter 95,† and whether the Governor, or Governor in Council, or Lieutenant-Governor of any Presidency or part of India, had such power in respect of any such territories:

Be it enacted that no rule, law, or regulation which prior to the passing of this Act shall have been made by the Governor General, or Governor General in Council, or by any other of the authorities aforesaid, for and in respect of any such non regulation province, shall be deemed invalid only by reason of the same not having been made in conformity with the provisions of the said Acts, or of any other Act of Parliament respecting the constitution and powers of the Council of India, or of the Governor General, or respecting the powers of such Governors or Governors in Council or Lieutenant Governors as aforesaid.

As to the effect of this provision, see the speech of Sir James Stephen in the debate on the Punjab Laws Act (Pros. of Council, 1872, at p. 214), and *Hunter's Life of Lord Mayo*, Vol. II, at pp. 214-221; also Legislative Department's B. Pros., August, 1883, No 108. The section is spent, see *Ilbert*, p. 317.

Provision for leave of absence to an ordinary member of Council.

26 It shall be lawful for the Governor General in Council, or Governor in Council, of either of the Presidencies, as the case may be, to grant to an ordinary member of Council leave of absence, under medical certificate, for a period not exceeding six months;

and such member, during his absence, shall retain his office, and shall, on his return and resumption of his duties, receive half his salary for the period of such absence, but if his absence shall exceed six months, his office shall be vacated.

Leave to an Ordinary Member of Council, if taken out of India, commences, in the absence of special orders to the contrary, on the day after he embarks at any port in India, except Aden, and ends on the day before he disembarks at any such port, provided that he has not been relieved of

* i.e., the Government of India Act, 1833.

† i.e., the Government of India Act, 1853.

charge of his office until he embarks and that he resumes charge immediately upon his disembarkation—see *Civil Service Regulations*, Art. 595. For form of notification granting an Ordinary Member leave, see App. VII, No. 4, *post*, p. 123. As to salary, see note to section 4, *ante*, p. 6. For digest, see *Libert*, p. 229.

27. If any vacancy shall happen in the office of an ordinary member of the Council of the Governor General or of the Council of either of the Presidencies, when no person provisionally appointed to succeed thereto shall be then present on the spot, then, and on every such occasion, such vacancy shall be supplied by the appointment of the Governor General in Council, or the Governor in Council, as the case may be ;

Power of making temporary appointments of members of Council, etc.

and, until a successor shall arrive, the person so nominated shall execute the office to which he shall have been appointed, and shall have all the powers thereof, and shall have and be entitled to the salary and other emoluments and advantages appertaining to the said office during his continuance therein, every such temporary member of Council foregoing all salaries and allowances by him held and enjoyed at the time of his being appointed to such office ;

and if any ordinary member of the Council of the Governor General or of the Council of either of the Presidencies shall, by any infirmity or otherwise, be rendered incapable of acting or of attending to act as such, or if any such member shall be absent on leave, and if any person shall have been provisionally appointed as aforesaid, then the place of such member absent or unable to attend shall be supplied by such person ;

and if no person provisionally appointed to succeed to the office shall be then on the spot, the Governor General in Council, or Governor in Council, as the case may be, shall appoint some person to be a temporary member of Council, and until the return of the member so absent or unable to attend, the person so provisionally appointed by the Secretary of State in Council, or so appointed by the Governor General in Council, or Governor in Council, as the case may be, shall execute the office to which he shall have been appointed, and shall have all the powers thereof and shall receive half the salary of the member of Council whose place he supplies, and also half the salary of his office under the Government of India, or the Government of either of the Presidencies, as the case may be, if he hold any such office, the remaining half of such last named salary being at the disposal of the Government of India, or other Government as aforesaid :

Provided always that no person shall be appointed a temporary member of the said Council who might not have been appointed as hereinbefore provided to fill the vacancy supplied by such temporary appointment.

The Commander-in-Chief is not, for the purposes of this section, an Ordinary Member of Council—see despatch from the Secretary of State, dated the 31st December, 1878, in Legislative Department's A. Pros., March, 1879, No. 8.

Quære whether the words "by any infirmity or otherwise" should be construed as meaning "by infirmity or some other event not under the

Member's control"—see Legislative Department's A. Pros., March, 1879, No. 3. For form of notification appointing a temporary Member of Council, see App. VII, No. 3 *post*, pp. 122-123. For digest, see *Ilbert*, pp. 235-236.

Governors of Fort St. George and Bombay may make rules for the conduct of business in their Councils.

28. It shall be lawful for the Governors of the Presidencies of Fort St. George and Bombay respectively from time to time to make rules and orders for the conduct of business in their Councils, and any order made or act done in accordance with such directions (except as hereinafter provided respecting laws and regulations) shall be deemed to be the order or act of the Governor in Council.

For digest, see *Ilbert*, p. 193.

Power to summon additional members to the Councils of Fort Saint George and Bombay for the purpose of making laws and regulations.

29. For the better exercise of the power of making laws and regulations hereinafter vested in the Governors of the said Presidencies in Council respectively, each of the said Governors shall, in addition to the members whereof his Council now by law consists, or may consist, termed herein ordinary members, nominate to be additional members, the Advocate General of the Presidency, or officer acting in that capacity, and such other persons, ~~not less than four nor more than eight in number~~, as to him may seem expedient to be members of Council, for the purpose of making laws and regulations only, and such members shall not be entitled to sit or vote at any meeting of Council, except at meetings held for such purpose:

Provided that not less than half of the persons so nominated shall be non-official persons, as hereinbefore described, and that the seat in Council of any non-official member accepting office under the Crown in India shall be vacated on such acceptance.

The number of Additional Members for the Madras and Bombay Councils is now not less than eight nor more than twenty—see the Indian Councils Act, 1892, s. 1 (1), *post*, p. 35.

Quære whether a person who is at the time absent from India may be nominated—see Legislative Department's Unofficial Reference No. 314 of 1897.

As to whether the words "or officer acting in that capacity" include a Legal Remembrancer or Government Advocate, see Legislative Department's Unofficial Reference No. 1012 of 1886.

The "half" probably does not include the Advocate General—see Legislative Department's Unofficial Reference No. 1630 of 1878; but the point, as Sir C. Ilbert remarks, does not seem to be clear. Section 33, however, diminishes its practical importance. For digest, see *Ilbert*, p. 216.

Such members to be appointed for two years.

30. Every additional member of Council so nominated shall be summoned to all meetings held for the purpose of making laws and regulations ~~for the term of two years from the date of such nomination.~~

This section seems to be inapplicable to the Advocate General—see Legislative Department's Unofficial Reference No. 1630 of 1878 and note to section 29 above. For digest, see *Ilbert*, p. 217.

Resignation of additional members.

31. It shall be lawful for any such additional member of Council to resign his office to the Governor of the Presidency, and on acceptance of such resignation by the Governor of the Presidency such office shall become vacant.

This section also seems to be inapplicable to the Advocate General—see note to section 29 above. For digest, see *Ilbert*, p. 236.

32. [*Rep. 55 & 56 Vict., c. 14, s. 4.*]

Section 4 of the Indian Councils Act, 1892, *post*, pp. 37—38, makes fresh provision for the filling up of vacancies among Additional Members.

33. No law or regulation made by any such Governor in Council in accordance with the provisions of this Act shall be deemed invalid by reason only that the proportion of non-official additional members hereby established was not complete at the date of its introduction to the Council or its enactment.

No law to be invalid by reason of incompleteness of number of non-official members.

Cf. s. 14, ante, p. 9. For digest and notes, see Ilbert, pp. 217—218.

34. At any meeting of the Council of either of the said Presidencies from which the Governor shall be absent, the senior civil ordinary member of Council present shall preside ;

Senior civil ordinary member of Council to preside in absence of Governor of Presidency.

and the power of making laws and regulations hereby vested in such Governor in Council shall be exercised only at meetings of such Council at which the Governor or some ordinary member of Council, and four or more members of Council (including under the term members of Council such additional members as aforesaid), shall be present ;

and in any case of difference of opinion at meetings of any such Council for making laws and regulations, where there shall be an equality of voices, the Governor, or, in his absence, the senior member then presiding, shall have two votes or the casting vote.

For digest and notes, see Ilbert, pp. 217—48.

35. [*Rep. 55 & 56 Vict., c. 19 (S.L.R.).*]

36. It shall be lawful for every such Governor to appoint all * * times and places of meeting of his Council for the purpose of making laws and regulations under the provisions of this Act, and to adjourn or from time to time to authorize such senior ordinary member of Council in his absence to adjourn any meeting for making laws and regulations from time to time and from place to place.

Governors of Presidencies to appoint subsequent meetings, and adjourn them.

The word "subsequent" was repealed by 55 & 56 Vict., c. 19 (S.L.R.).
For digest, see Ilbert, p. 217.

37. Previously to the first of such meetings of their Councils for the purpose of making laws and regulations under the provisions of this Act, the Governors of the said Presidencies in Council respectively shall make rules for the conduct of business at such meetings subject to the sanction of the Governor General in Council ;

Rules and orders for conduct of business at such meetings.

but such rules may be subsequently amended at meetings for the purpose of making laws and regulations, subject to the assent of the Governor :

Provided always that it shall be lawful for the Governor General in Council to disallow any such rule, and render the same of no effect.

For the rules made under this section for the various local Councils, see,—
as to Madras, Legislative Department's B. Pros., April, 1894, No. 33,
and January, 1897, No. 31 ;

" " Bombay *Government Gazette*, 1896, Pt. I, p. 988 ;

" " Bengal, Legislative Department's B. Pros., July, 1890, Nos. 48—51 ;

" " the North-Western Provinces and Oudh, *North-Western Provinces and Oudh Gazette*, 1887, Pt. I, p. 6 ;

" " the Punjab, *Punjab Gazette*, 1897, Pt. I, p. 651.

" " Burma, *Burma Gazette*, 1897, Pt. I, p. 413.

For digest see Ilbert, pp. 224—225.

Business to be transacted at such meetings.

38. No business shall be transacted at any meeting of the Council of either of the said Presidencies for the purpose of making laws and regulations (except as last hereinbefore provided) other than the consideration and enactment of measures introduced into such Council for the purpose of such enactment;

and it shall not be lawful for any member or additional member to make, or for the Council to entertain, any motion, unless such motion shall be for leave to introduce some measure as aforesaid into Council or have reference to some measure actually introduced thereinto:

Provided always that it shall not be lawful for any member or additional member to introduce, without the previous sanction of the Governor, any measure affecting the public revenues of the Presidency, or by which any charge shall be imposed on such revenues.

The provisions of this section have been modified by the Indian Councils Act, 1892, s. 2, *post*, p. 36, which provides for the discussion of Annual Financial Statements and the asking of questions in the Legislative Councils. For digest, see *Ilbert*, pp. 223-224.

Governors to assent to laws and regulations of Presidencies.

39. When any law or regulation has been made by any such Council at a meeting for the purpose of making laws and regulations as aforesaid, it shall be lawful for the Governor, whether he shall or shall not have been present in Council at such meeting, to declare that he assents to, or withholds his assent from, the same.

This power is conferred on the Governor in person. For form of recording assent, see App. VII, No. 12, *post*, p. 126. For digest, see *Ilbert*, p. 225.

Governor General to assent to laws and regulations of Presidencies.

40. The Governor shall transmit forthwith an authentic copy of every law or regulation to which he shall have so declared his assent to the Governor General;

and no such law or regulation shall have validity until the Governor General shall have assented thereto, and such assent shall have been signified by him to, and published by, the Governor:

Provided always, that in every case where the Governor General shall withhold his assent from any such law or regulation, he shall signify to the Governor in writing his reason for so withholding his assent.

The power of assenting to or withholding assent from, an Act of a local legislature is, it will be seen, conferred on the Governor General personally.

The communication of the Governor General's assent by telegram has been deemed sufficient—see Legislative Department's A. Pros., April, 1894, Nos. 42-49.

Where there is room for doubt whether an Act passed by a local legislature is *ultra vires* or not, the practice is to give it the benefit of the doubt and obtain the Governor General's assent; and, even where it is clear that an Act is *ultra vires* of the local legislature, the Governor General has nevertheless on many occasions given his assent. It is difficult to classify the latter cases further than by saying that the Governor General has given his assent to Acts that are *ultra vires*—

- (a) on the ground of urgency—see Legislative Department's A. Pros., April, 1882, Nos. 424-444;
- (b) on the ground that the conflict between the local law and the Imperial Act will in practice rarely, if ever, occur—see Legislative Department's A. Pros., August, 1879, Nos. 1-17;
- (c) on the ground of inconvenience to Local Governments in having to re-enact the Bill—see Legislative Department's A. Pros., July, 1878, Nos. 34-96;

(d) subject to the conditions—

(i) that the *ultra vires* provisions will be construed so as not to conflict with the Imperial Acts—see Legislative Department's A. Pros., July, 1878, Nos 12—23;

(ii) that the Local Government will take steps to repeal the obnoxious provisions at the earliest possible date—see Legislative Department's A. Pros., September, 1884, Nos. 32—65.

The Governor General's power of withholding assent from an Act of a local legislature is not compromised by the fact that the penal clauses have been approved, or that administrative approval of the measure has been expressed. See No. 4 of *Instructions to Local Governments*, post, pp. 74—75.

An Act of a local legislature does not become law until it has been assented to by the Governor General and the assent has been published. Hence it should be expressed so as to come into operation on a particular future date, unless there is in the local Statute-book such a provision as that to be found in section 4 (1) of the Burma General Clauses Act, 1893 (Burma Act I of 1893).

A local legislature cannot extend the territorial operation of an Act of Parliament—see Legislative Department's Unofficial Reference No. 3277, October, 1881.

A local legislature may deal freely with the jurisdiction of the Courts so far as that jurisdiction rests on an Act of the Governor General in Council—see paragraphs 14 *et seq* of note in App. VIII, post, p. 139.

The power of a local legislature to make laws as to jurisdiction over European British subjects has been extended by the Indian Councils Act, 1871, post, p. 25.

Assent has been given to an Act passed by a local legislature even although it contained penal clauses to which the previous sanction of the Governor General in Council had not been obtained, as required by the Secretary of State's despatch No. 35 (Legislative), dated the 1st December, 1862, App. I, post, p. 97.

For form of recording the Governor General's assent, see App. VII, No. 12, post, p. 126. For digest, see *Ilbert*, p. 225.

41. Whenever any such law or regulation shall have been assented to by the Governor General, he shall transmit to the Secretary of State for India an authentic copy thereof ;

and it shall be lawful for Her Majesty to signify, through the Secretary of State for India in Council, Her disallowance of such law or regulation ;

and such disallowance shall make void and annul such law or regulation from or after the day on which such Governor shall make known by proclamation, or by signification to the Council, that he has received the notification of such disallowance by Her Majesty.

For digest, see *Ilbert*, p. 225.

42. The Governor of each of the said Presidencies in Council shall have power at meetings for the purpose of making laws and regulations as aforesaid, and, subject to the provisions herein contained, to make laws and regulations for the peace and good government of such Presidency and for that purpose to repeal and amend any laws and regulations made prior to the coming into operation of this Act by any authority in India, so far as they affect such Presidency :

Provided always, that such Governor in Council shall not have the power of making laws or regulations which shall in any way affect any of the provisions of this Act, or of any other Act of Parliament in force, or hereafter to be in force, in such Presidency.

The powers of a local legislature are, it will be seen, strictly territorial. They have been extended, as far as regards the repeal and amendment of other laws, by the Indian Councils Act, 1892, s. 5, post, p. 38.

Power of the Crown to disallow laws and regulations of Presidencies.

Extent of power of Governor of Presidency in Council to make laws and regulations.

As to the power of a local legislature to affect the jurisdiction of a High Court, see paragraphs 14 *et seq.* of note in App. VIII, *post*, pp. 139—145.

In his despatch No. 44, dated the 3rd December, 1896, the Secretary of State remarked that "It appeared inconvenient to incorporate, as part of a General Act, sections which are passed by a local legislature and are only intended to have a local application." Therefore, where a local legislature repeals or amends a General Act, it ought not to do so textually, but should enact the modifying provisions desired as a separate Act of the local legislature to take effect, with the previous sanction of the Governor General required by section 5 of the Indian Councils Act, 1892, notwithstanding anything contained in the General Act.

For digest and further notes, see *Ilbert*, p. 221, and Mr. Chalmers' *General Clauses Act*, 1897, pp. 54—55.

Governor of Presidency, except with sanction of Governor General, not to make or take into consideration certain laws or regulations for certain purposes.

43. It shall not be lawful for the Governor in Council of either of the aforesaid Presidencies, except with the sanction of the Governor General, previously communicated to him, to make regulations or take into consideration any law or regulation for any of the purposes next hereinafter mentioned; that is to say,

(1) "affecting the public debt of India, or the customs duties, or any other tax or duty now in force and imposed by the authority of the Government of India for the general purposes of such Government :

(2) regulating any of the current coin, or the issue of any bills, notes or other paper currency :

(3) regulating the conveyance of letters by the post office or messages by the electric telegraph within the Presidency :

(4) altering in any way the Penal Code of India, as established by Act of the Governor General in Council, No. 42 of 1860 :

(5) affecting the religion or religious rites and usages of any class of Her Majesty's subjects in India :

(6) affecting the discipline or maintenance of any part of Her Majesty's military or naval forces :

(7) regulating patents or copyright :

(8) affecting the relations of the Government with foreign princes or states :

Provided always, that no law or provision of any law or regulation which shall have been made by any such Governor in Council, and assented to by the Governor General as aforesaid, shall be deemed invalid only by reason of its relating to any of the purposes comprised in the above list.

See also s. 5 of the Indian Councils Act, 1892, *post*, p. 38.

The power of sanction here given is conferred on the Governor General personally. The sanction should probably be obtained before the measure requiring it is introduced—see Legislative Department's Unofficial Reference No. 607 of 1898.

In clause (4) "42" would seem to be a misprint for "45." As to the meaning of the words "altering in any way," see Sir Henry Maine's Minutes, Nos. 6 and 7, quoted from *post*, p. 98. The Secretary of State has directed that all Bills of local Councils containing penal clauses *should* be submitted for the previous sanction of the Governor General *in Council*—see His Lordship's despatch No. 35 (Legislative), dated the 1st December, 1862

App. I. *post*, p. 97. See also rule 27 (1) of the Rules of *Executive Business*, *post*, p. 59, and No. 3 (2) of the *Instructions to Local Governments*, *post*, p. 74.

Hindu law is so essentially a religious law that any measure affecting it would seem to require the previous sanction of the Governor General under clause (5)—see Legislative Department's Unofficial Reference No. 344 of 1897.

For digest and notes, see *Ilbert*, pp. 221—223.

44. The Governor General in Council, so soon as it shall appear to him expedient, shall, by proclamation, extend the provisions of this Act touching the making of laws and regulations for the peace and good government of the Presidencies of Fort Saint George and Bombay to the Bengal Division of the Presidency of Fort William, and shall specify in such proclamation the period at which such provisions shall take effect, and the number of councillors whom the Lieutenant-Governor of the said division may nominate for his assistance in making laws and regulations;

Governor General may establish Councils for making laws and regulations in the Bengal Presidency, etc.

and it shall be further lawful for the Governor General in Council, from time to time and in his discretion by similar proclamation, to extend the same provisions to the territories known as the North-Western Provinces and the Punjab respectively.

As to the number of Councillors for the Bengal Division of the Presidency of Fort William and for the North-Western Provinces and Oudh, see the Indian Councils Act, 1892, s. 1 (2), *post*, p. 35.

These provisions took effect in the Presidency of Fort William on the 18th January, 1852—see *Calcutta Gazette*, 1862, pp. 227—228; in the North-Western Provinces and Oudh on the 1st December, 1886—see *Gazette of India*, 1886, Pt. I, p. 708; and in the Punjab on the 1st May, 1897—see *Gazette of India*, 1897, Pt. I, p. 261.

For digest and notes, see *Ilbert*, pp. 216 and 219—221.

45. Whenever such proclamation as aforesaid shall have been issued regarding the said division or territories respectively, the Lieutenant-Governor thereof shall nominate, for his assistance in making laws and regulations, such number of councillors as shall be in such proclamation specified :

Constitution of such Councils.

Provided that not less than one-third of such councillors shall in every case be non-official persons, as hereinbefore described, and that the nomination of such councillors shall be subject to the sanction of the Governor General :

And provided further that at any meeting of any such Council from which the Lieutenant-Governor shall be absent, the member highest in official rank among those who may hold office under the Crown shall preside ;

and the power of making laws and regulations shall be exercised only at meetings at which the Lieutenant-Governor, or some member holding office as aforesaid, and not less than one-half of the members of Council so summoned as aforesaid, shall be present ;

and in any case of difference of opinion at any meetings of such Council for making laws and regulations, where

there shall be an equality of voices, the Lieutenant-Governor, or such member highest in official rank as aforesaid then presiding, shall have two votes or the casting vote.

The expression "Councillor" is, it will be seen, introduced in connection with the local Legislative Councils of those provinces in which there are no Executive Councils, *i.e.*, in connection with local legislatures other than those of Madras and Bombay. The expression "Additional Councillor" is, however, used in s. 9, *ante*, p. 8, in respect of the Governor General's Legislative Council.

For digest and critical notes, see *Ilbert*, pp. 218 and 221.

Power to constitute new provinces and appoint Lieutenant-Governors.

46. It shall be lawful for the Governor General, by proclamation as aforesaid, to constitute from time to time new provinces for the purposes of this Act, to which the like provisions shall be applicable; and further to appoint from time to time a Lieutenant-Governor to any province so constituted as aforesaid, and from time to time to declare and limit the extent of the authority of such Lieutenant-Governor, in like manner as is provided by the Act of the seventeenth and eighteenth years of Her Majesty, chapter 77, respecting the Lieutenant-Governors of Bengal and the North-Western Provinces.

The Government of India Act, 1854 (17 & 18 Vict., c. 77), s. 4, takes power for the Governor General in Council, with the sanction of the Secretary of State, "to declare and limit the extent of the authority of the Governor in Council, Governor or Lieutenant-Governor of Bengal or of Agra or the North-West Provinces." This power is here extended so as to apply in the case of Provinces other than those of Bengal and the North-West.

† A Legislative Council for Burma was established by a proclamation under this section on the 1st May, 1897—see Home Department's Notification No. 509, dated the 9th April, 1897, *Gazette of India*, Pt. I, p. 261.

For form of notification, see App. VII, No. 14, *post*, pp. 127—128.

For digest and notes, see *Ilbert*, pp. 219—221.

Power to alter boundaries of Presidencies, etc., by proclamation.

47. It shall be lawful for the Governor General in Council, by such proclamation as aforesaid, to fix the limits of any presidency, division, province, or territory in India for the purposes of this Act, and further by proclamation to divide or alter from time to time the limits of any such presidency, division, province, or territory for the said purposes:

Provided always that any law or regulation made by the Governor or Lieutenant-Governor in Council of any presidency, division, province, or territory shall continue in force in any part thereof which may be severed therefrom by any such proclamation until superseded by law or regulation of the Governor General in Council, or of the Governor or Lieutenant-Governor in Council of the presidency, division, province, or territory to which such parts may become annexed.

It would appear from the context that the power here given was intended to be exercised for purposes of legislation only.* Thus, in 1871, the Bombay Legislative Council passed a Bill to bring under the general regulations and Acts in force in that province certain villages received in exchange from His Highness the Nizam of Hyderabad. It appeared that the limits of the province had never been altered under this section so as to include those villages, and the Government of India were advised that the legislation was *ultra vires*—see Legislative Department's A. Pros., August, 1871, Nos. 1—9.

A more general power of defining and altering the limits of provinces is given by section 4 of the Government of India Act, 1865 (28 & 29 Vict., c. 17). For digest and notes, see *Ilbert*, pp. 210—221.

48. It shall be lawful for every such Lieutenant-Governor in Council thus constituted to make laws for the peace and good government of his respective division, province, or territory;

Powers of newly constituted Lieutenant-Governors in Council.

and, except as otherwise hereinbefore specially provided, all the provisions in this Act contained respecting the nomination of additional members for the purpose of making laws and regulations for the Presidencies of Fort Saint George and Bombay, and limiting the power of the Governors in Council of Fort Saint George and Bombay, for the purpose of making laws and regulations, and respecting the conduct of business in the meetings of such Councils for that purpose, and respecting the power of the Governor General to declare or withhold his assent to laws or regulations made by the Governors in Council of Fort Saint George and Bombay, and respecting the power of Her Majesty to disallow the same, shall apply to laws or regulations to be so made by any such Lieutenant-Governor in Council.

For digest and notes, see *Ilbert*, pp. 218—226, 236—237.

49. Provided always that no proclamation to be made by the Governor General in Council under the provisions of this Act, for the purpose of constituting any Council for the presidency, division, provinces, or territories hereinbefore named, or any other provinces, or for altering the boundaries of any presidency, division, province, or territory, or constituting any new province for the purpose of this Act, shall have any force or validity until the sanction of Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the Governor General.

Previous assent of the Crown necessary to give validity to proclamation.

For digest and critical notes, see *Ilbert*, pp. 219—221.

50. If any vacancy shall happen in the office of Governor General of India when no provisional successor shall be in India to supply such vacancy, then, and in every such case, the Governor of the Presidency of Fort Saint George or the Governor of the Presidency of Bombay, who shall have been first appointed to the office of Governor by Her Majesty, shall hold and execute the said office of Governor General of India and Governor of the Presidency of Fort William in Bengal until a successor shall arrive, or until some person in India shall be duly appointed thereto;

Provision for the supply of the office of Governor General in certain circumstances.

and every such acting Governor General shall, during the time of his continuing to act as such, have and exercise all the rights and powers of Governor General of India, and shall be entitled to receive the emoluments and advantages appertaining to the office by him supplied, such acting Governor General foregoing the salary and allowances appertaining to the office of Governor to which he stands appointed, and such office of Governor shall be supplied for the time during which such Governor shall act as Governor General, in the manner directed in section

63 of the Act of the third and fourth years of King William the Fourth, chapter 85*.

For digest, see *Ilbert*, pp. 233—234.

If it appears to Governor necessary to exercise powers before taking his seat in Council he may make his appointment, etc., known by proclamation.

51. If, on such vacancy occurring, it shall appear to the Governor, who by virtue of this Act shall hold and execute the said office of Governor General, necessary to exercise the powers thereof before he shall have taken his seat in Council, it shall be lawful for him to make known, by proclamation, his appointment, and his intention to assume the said office of Governor General, and after such proclamation, and thenceforth until he shall repair to the place where the Council may assemble, it shall be lawful for him to exercise alone all or any of the powers which might be exercised by the Governor General in Council except the power of making laws and regulations ;

and all acts done in the exercise of the said powers, except as aforesaid, shall be of the same force and effect as if they had been done by the Governor General in Council :

Provided that all acts done in the said Council after the date of such proclamation, but before the communication thereof to such Council, shall be valid, subject nevertheless to revocation or alteration by such Governor who shall have so assumed the said office of Governor General ;

and from the date of the vacancy occurring until such Governor shall have assumed the said office of Governor General the provisions of section 62 of the Act of the third and fourth years of King William the Fourth, chapter 85*, shall be and the same are declared to be applicable to the case.

For digest, see *Ilbert*, pp. 233, 234.

Nothing in this Act shall derogate from the powers of the Crown or Secretary of State for India in Council.

52. Nothing in this Act contained shall be held to derogate from or interfere with (except as hereinbefore expressly provided) the rights vested in Her Majesty, or the powers of the Secretary of State for India in Council in relation to the government of Her Majesty's dominions in India, under any law in force at the date of the passing of this Act ;

and all things which shall be done by Her Majesty, or by the Secretary of State as aforesaid, in relation to such government, shall have the same force and validity as if this Act had not been passed.

For digest and notes, see *Ilbert*, pp. 266—267.

Meaning of term "in Council."

53. Wherever any act or thing is by this Act required or authorized to be done by the Governor General or by the Governors of the Presidencies of Fort Saint George and Bombay in Council, it is not required that such act or thing should be done at a meeting for making laws and regulations, unless where expressly provided.

54. [*Rep. 38 & 39 Vict., c. 66 (S.L.R.).*]

* i.e., the Government of India Act, 1833.

**THE INDIAN COUNCILS ACT, 1871 (34 & 35
VICT., c. 34).**

CONTENTS.

SECTIONS.

- 1. Power to Local Legislatures to confer jurisdiction over European British subjects to Magistrates in certain cases.**
- 2. Committal of defendant (being an European British subject) to the High Court. (Indian Act No. XXV of 1861, s. 226.)**
- 3. Power to Local Legislatures to amend and repeal certain laws.**

THE INDIAN COUNCILS ACT, 1871 (34 & 35 VICT., c. 34).*

An Act to extend in certain respects the power of Local Legislatures in India as regards European British subjects.

[29TH JUNE, 1871.]

WHEREAS it is expedient that the power of making laws and regulations conferred on Governors of Presidencies in India in Council by the Indian Councils Act, 24 & 25 Vict., c. 67, section 42, should in certain respects be extended :

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. No law or regulation heretofore made or hereafter to be made by any Governor or Lieutenant-Governor in Council in India in manner prescribed by the aforesaid Act shall be invalid only by reason that it confers on Magistrates, being Justices of the Peace, the same jurisdiction over European British subjects as such Governor or Lieutenant-Governor in Council, by regulations made as aforesaid, could have lawfully conferred or could lawfully confer on Magistrates in the exercise of authority over natives in the like cases.

Power to Local Legislatures to confer jurisdiction over European British subjects to Magistrates in certain cases,

As to the difficulties which gave rise to the passing of this Act, see Legislative Department's A. Pros., September, 1870, Nos. 7-25. For digest and notes, see *Ilbert*, p. 226.

2. When evidence has been given in any proceeding under this Act before a Magistrate, being a Justice of the Peace, which appears to be sufficient for the conviction of the accused person, being an European British subject, of an offence for which, if a native, he would under existing law be triable exclusively before the Court of Session, or which, in the opinion of the Magistrate, is one which ought to be tried by the High Court, the accused person, if such European British subject, shall be sent for trial by the Magistrate before the High Court.

Committal of defendant (being an European British subject) to the High Court. (Indian Act No. XXV of 1861, s. 226.)

This enactment has apparently been superseded by section 447 of the Code of Criminal Procedure, 1898 (Act V of 1898), which has taken the place of section 226 of the Code of Criminal Procedure (Act XXV of 1861). It has, therefore, not been digested by Sir C. Ilbert. The words "under this Act" seem to mean under an Act passed by a local legislature.

3. And whereas by an Act passed by the Governor General of India in Council, Indian Act No. XXII of 1870, it is provided that certain Acts heretofore passed by the Governors of Madras and Bombay respectively in Council,

Power to Local Legislatures to amend and repeal certain laws.

* Short title conferred by the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

and by the Lieutenant-Governor of Bengal in Council, shall, so far as regards the liability of European British subjects to be convicted and punished thereunder, be and be deemed to be as valid as if they had been passed by the Governor General of India in Council at a meeting for the purpose of making laws and regulations:

Be it further enacted that the said Governors and Lieutenant-Governor in Council respectively shall have power to repeal and amend any of the said Acts so declared valid, by Acts to be passed under the provisions of the Indian Councils Act.

24 & 25 Vict.,
c. 67.

This enactment has been superseded by section 5 of the Indian Councils Act, 1892, *post*, p. 38. It has, therefore, not been digested by Sir C. Ilbert.

Act XXII of 1870 (*an Act to confirm certain laws affecting European British subjects*) was repealed by the Code of Criminal Procedure, 1882 (Act X of 1882).

For further note, see *Ilbert*, p. 226.

THE INDIAN COUNCILS ACT, 1874 (37 & 38
VICT., C. 91).

CONTENTS.

SECTIONS.

1. Number of ordinary Members of Governor General's Council may be increased.
2. Number of Members of Council may be subsequently diminished.
3. Not to affect power of Governor General in respect of his Council.

THE INDIAN COUNCILS ACT, 1874 (37 & 38 VICT., c. 91).*

An Act to amend the Law relating to the Council of the Governor General of India.

[7TH AUGUST, 1874.]

WHEREAS it is expedient to amend the law relating to the Council of the Governor General of India:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. It shall be lawful for Her Majesty, if she shall see fit, to increase the number of the ordinary members of the Council of the Governor General of India to six, by appointing any person from time to time by warrant under Her Royal Sign Manual to be an ordinary member of the said Council in addition to the ordinary members thereof appointed under section 3 of "The Indian Councils Act, 1861,"† and under section 8 of the Act of the thirty-second and thirty-third years of Her present Majesty, chapter 97‡.

24 & 25 Vict.,
c. 67.

The law for the time being in force with reference to ordinary members of the Council of the Governor General of India shall apply to the person so appointed by Her Majesty under this Act, (who shall be called the member of Council for public works purposes)

For digest and notes, see *Ilbert*, pp. 180—182.

2. (Whenever a member of Council for public works purposes shall have been appointed under the first section of this Act) it shall be lawful for Her Majesty, if she shall see fit, to diminish from time to time the number of the ordinary members of the Council of the Governor General of India to five, by abstaining so long as she shall deem proper from filling up any vacancy or vacancies occurring in the offices of the ordinary members of the said Council appointed under section 3 of "The Indian Councils Act, 1861,"† and under section 8 of the Act of the thirty-second and thirty-third years of Her present Majesty, chapter 97‡, not being a vacancy in the office of the ordinary member of Council required by law to be a barrister or a member of the faculty of advocates of Scotland;

24 & 25 Vict.,
c. 67.

* Short title conferred by the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

† See *ante*, pp. 5—6.

‡ *i.e.*, the Government of India Act, 1869.

and whenever, the Secretary of State for India shall have informed the Governor General of India that it is not the intention of Her Majesty to fill up any vacancy, no temporary appointment, shall be made to such vacancy under section 27 of "The Indian Councils Act, 1861";*

and if any such temporary appointment shall have been made previously to the receipt of such information, the tenure of office of the person temporarily appointed shall cease and determine from the time of the receipt of such information by the Governor General.

For digest and notes, see *Ilbert*, pp. 180—182, 236.

Not to affect power of Governor General in respect of his Council. 3. Nothing in this Act contained shall affect the provisions of section 8 of "The Indian Councils Act, 1861,"† or the provisions of section 5 of the Act of the thirty-third year of Her Majesty, chapter 3‡, or any power or authority vested by law in the Governor General of India in respect of his Council or of the members thereof. 24 & 25 Vict., c. 67.

* See *ante*, pp. 14—15.

† See *ante*, p. 8.

‡ *i.e.*, the Government of India Act, 1870, *post*, p. 43.

THE INDIAN COUNCILS ACT, 1892 (55 & 56
VICT., c. 14).

CONTENTS.

SECTIONS.

1. Provisions for increase of number of members of Indian Councils for making laws and regulations.
2. Modification of provisions of 24 & 25 Vict., c. 67, as to business at legislative meetings.
3. Meaning of 24 & 25 Vict., c. 67, s. 22, 3 & 4 Will. 4, c. 85, and 16 & 17 Vict., c. 95.
4. Repeal.
Power to fill up vacancy in number of additional members.
5. Powers of Indian provincial legislatures.

THE INDIAN COUNCILS ACT, 1892 (55 & 56 VICT., c. 14).

An Act to amend the Indian Councils Act, 1861.*

[20TH JUNE, 1892.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

For the Secretary of State's despatch accompanying this Act, see App. III, *post*, pp. 109—112.

1. (1) The number of additional members of Council nominated by the Governor General under the provisions of section 10† of the Indian Councils Act, 1861, shall be such as to him may seem from time to time expedient, but shall not be less than ten or more than sixteen ;

Provisions for increase of number of members of Indian Councils for making laws and regulations—24 & 25 Vict., c. 67.

and the number of additional members of Council nominated by the Governors of the Presidencies of Fort St. George and Bombay respectively under the provisions of section 29‡ of the Indian Councils Act, 1861, shall (besides the Advocate General of the Presidency or officer acting in that capacity) be such as to the said Governors respectively may seem from time to time expedient, but shall not be less than eight nor more than twenty.

(2) It shall be lawful for the Governor General in Council by proclamation from time to time to increase the number of councillors whom the Lieutenant-Governors of the Bengal Division of the Presidency of Fort William and of the North-Western Provinces and Oudh respectively may nominate for their assistance in making laws and regulations :

Provided always, that not more than twenty shall be nominated for the Bengal Division, and not more than fifteen for the North-Western Provinces and Oudh.

(3) Any person resident in India may be nominated an additional member of Council under sections 10† and 29‡ of the Indian Councils Act, 1861, and this Act, or a member of the Council of the Lieutenant-Governor of any province to which the provisions of the Indian Councils Act, 1861, touching the making of laws and regulations, have been or are hereafter extended or made applicable.

As to whether a person who is ordinarily resident in India, but is at the time temporarily out of India, may be nominated under this section, see Legislative Department's Unofficial References Nos. 314, 340 and 422 of 1897.

* See *ante*, p. 3.

† See *ante*, pp. 8—9.

‡ See *ante* p. 16.

(f) The Governor General in Council may from time to time, with the approval of the Secretary of State in Council, make regulations as to the conditions under which such nominations, or any of them, shall be made by the Governor General, Governors, and Lieutenant-Governors, respectively, and prescribe the manner in which such regulations shall be carried into effect.

For the regulations made under this section for the nomination of additional members of the Governor General's Council, see *post*, pp. 89-92. For digest and notes, see *Libert*, pp. 199-200, 216-217, 218-219.

Modification of provisions of 24 & 25 Vict., c. 67, as to business at legislative meetings.

2. Notwithstanding any provision in the Indian Councils Act, 1861, the Governor General of India in Council may from time to time make rules authorising at any meeting of the Governor General's Council for the purpose of making laws and regulations the discussion of the annual financial statement of the Governor General in Council and the asking of questions, but under such conditions and restrictions, as to subject or otherwise, as shall be in the said rules prescribed or declared;

and, notwithstanding any provisions in the Indian Councils Act, 1861, the Governors in Council of Fort St. George and Bombay, respectively, and the Lieutenant-Governor of any province to which the provisions of the Indian Councils Act, 1861, touching the making of laws and regulations, have been or are hereafter extended or made applicable, may from time to time make rules for authorising at any meeting of their respective Councils for the purpose of making laws and regulations the discussion of the annual financial statement of their respective Local Governments, and the asking of questions, but under such conditions and restrictions, as to subject or otherwise, as shall in the said rules applicable to such Councils respectively be prescribed or declared;

but no member at any such meeting of any Council shall have power to submit or propose any resolution, or to divide the Council in respect of any such financial discussion, or the answer to any question asked under the authority of this Act, or the rules made under this Act:

Provided that any rule made under this Act by a Governor in Council, or by a Lieutenant-Governor, shall be submitted for, and shall be subject to, the sanction of the Governor General in Council, and any rule made under this Act by the Governor General in Council shall be submitted for and shall be subject to the sanction of the Secretary of State in Council:

Provided, also, that rules made under this Act shall not be subject to alteration or amendment at meetings for the purpose of making laws and regulations.

For the rules made under this section for the Governor General's Council, see *post*, pp. 93-96. For those made for the various local Councils, see -

as to Madras, *Fort St. George Gazette*, 1893, Pt. I, p. 178;

„ „ Bombay, *Bombay Government Gazette*, 1893, Pt. I, p. 76;

as to Bengal, *Calcutta Gazette*, 1893, Pt. I, p. 148;

" " the North-Western Provinces and Oudh, *North-Western Provinces and Oudh Gazette*, 1893, Pt. I, p. 47.

No rules of the kind have as yet been made for the Punjab or Burma.

For digest and critical notes, see *Ilbert*, pp. 211—212, 223—225.

24 & 25 Vict.
c. 67.

3. It is hereby declared that in the twenty-second section of the Indian Councils Act, 1861*, it was and is intended that the words "Indian territories now under the Dominion of Her Majesty" should be read and construed as if the words "or hereafter" were and had at the time of the passing of the said Act been inserted next after the word "now";

Meaning of
24 & 25 Vict.,
c. 67, s. 22,
3 & 4 Will. 4,
c. 85, and
16 & 17 Vict.,
c. 95.

and further, that the Acts third and fourth William the Fourth, chapter 85†, and sixteenth and seventeenth Victoria, chapter 95‡, respectively, shall be read and construed as if at the date of the enactment thereof respectively it was intended and had been enacted that the said Acts respectively should extend to and include the territories acquired after the dates thereof respectively by the East India Company, and should not be confined to the territories at the dates of the said enactments respectively in the possession and under the Government of the said Company.

4. Sections 13 and 32 of the Indian Councils Act, 1861§, Repeal. are hereby repealed, and it is enacted that—

- (1) If any additional member of Council, or any member of the Council of a Lieutenant-Governor, appointed under the said Act or this Act, shall be absent from India or unable to attend to the duties of his office for a period of two consecutive months, it shall be lawful for the Governor General, the Governor, or the Lieutenant-Governor, to whose Council such additional member or member may have been nominated (as the case may be) to declare, by a notification published in the Government Gazette, that the seat in Council of such person has become vacant:
- (2) In the event of a vacancy occurring by the absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, of any such additional member or member of the Council of a Lieutenant-Governor, it shall be lawful for the Governor General, for the Governor, or for the Lieutenant-Governor, as the case may be, to nominate any person as additional member or member, as the case may be, in his place;

Power to fill
up vacancy
in number of
additional
members.

and every member so nominated shall be summoned to all meetings held for the purpose of making laws and regulations for the term of two years from the date of such nomination:

* See *ante*, pp. 12—13.

† *i.e.*, the Government of India Act, 1833.

‡ *i.e.*, the Government of India Act, 1853.

§ See *ante*, pp. 9 and 16.

THE GOVERNMENT OF INDIA ACT, 1870 (33 VICT., c. 3).*

An Act to make better provision for making laws and regulations for certain parts of India, and for certain other purposes relating thereto.

[25TH MARCH, 1870.]

WHEREAS it is expedient that provision should be made to enable the Governor General of India in Council to make regulations for the peace and good government of certain territories in India, otherwise than at meetings for the purpose of making laws and regulations held under the provisions of the Indian Councils Act, 1861, and also for certain other purposes connected with the Government of India :

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. Every Governor of a Presidency in Council, Lieutenant-Governor, or Chief Commissioner, whether the Governorship, or Lieutenant-Governorship, or Chief Commissionership be now in existence or may hereafter be established, shall have power to propose to the Governor General in Council drafts of any regulations, together with the reasons for proposing the same, for the peace and government of any part or parts of the territories under his government or administration to which the Secretary of State for India shall from time to time by resolution in Council declare the provisions of this section to be applicable from any date to be fixed in such resolution ;

Power to Executive Government of British India to make regulations for certain parts thereof.

and the Governor General in Council shall take such draft and reasons into consideration ;

and when any such draft shall have been approved of by the Governor General in Council and shall have received the Governor General's assent, it shall be published in the "Gazette of India" and in the local "Gazette," and shall thereupon have like force of law and be subject to the like disallowances as if it had been made by the Governor General of India in Council at a meeting for the purpose of making laws and regulations.

The Secretary of State for India in Council may from time to time withdraw such power from any Governor, Lieutenant-Governor, or Chief Commissioner, on whom it has been conferred, and may from time to time restore the same as he shall think fit.

* Short title conferred by the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

This Statute, which was the outcome of a despatch from the Government of India to the Secretary of State, dated the 10th January, 1868, and drafted by Sir Henry (then Mr.) Maine,* was intended to provide a more summary legislative procedure, but not in any way to increase or diminish the legislative powers of the Governor General in Council. The expression "like force of law" means precisely the same legal operation or effect as the operation or effect of an Act of the Governor General in Council passed at a meeting for the purpose of making laws and regulations. See Legislative Department's Unofficial Reference No. 1081 of September, 1877.

Sir A. Milner thought that an Act should not be amended by a Regulation made under this Statute—see Legislative Department's Unofficial Reference No. 953 of 1895. Sir A. Scoble, on the other hand, objected to a Regulation being amended by an Act—see Keep-with to Legislative Department's Pros., April, 1891, Nos. 393—446.

For the places to which this section has been declared applicable, see Appendix B to the Scheduled Districts Act, 1874 (XIV of 1874), published among the General Acts, Vol. II. Such places become "Scheduled Districts"—see section 1 of the Scheduled Districts Act, 1874, and section 3 (40) of the General Clauses Act, 1897 (X of 1897).

The application of a Regulation made under this Statute is, of course, strictly territorial, and the circumstance has given rise to a nice question of law—see Legislative Department's Unofficial Reference No. 255 of 1898.

In later legislation in India the expression "Regulation" has been confined to enactments made under this Statute. See section 3 (46) of the General Clauses Act, 1897.

It should be borne in mind that a Regulation made under this Statute must be published in *both* the Gazette of India and the local official Gazette, and that it cannot come into force until it has been so published.

Merely formal amendments may be made by the Government of India, without reference to the Local Government concerned, in the draft of a Regulation proposed under this section; but, where material amendments affecting the substance are deemed necessary, the Regulation must be sent back to be proposed afresh after revision. For a draft altered as to form and forthwith passed, see Legislative Department's Unofficial Reference No. 124 of 1873; for a draft sent back for revision and re-submission, see Legislative Department's Unofficial Reference No. 169 of 1873.

It has always been held that a draft of a Regulation proposed under this Statute should be considered *at a meeting* of the Executive Council, and rule 33 of the *Rules of Business*, *post*, p. 61, accordingly makes express provision for this.

For form of notification publishing a Regulation made under this Statute, see App. VII No 15, *post*, p. 128. For digest and further critical notes, see *Libert*, pp. 213—215; also Mr. Chalmers' *General Clauses Act*, 1897, pp. 52—53.

Copies of regulations to be sent to Secretary of State. Subsequent enactments to control regulations.

2. The Governor General shall transmit to the Secretary of State for India in Council an authentic copy of every regulation which shall have been made under the provisions of this Act;

and all laws or regulations hereafter made by the Governor General of India in Council, whether at a meeting for the purpose of making laws and regulations, or under the said provisions, shall control and supersede any regulation in anywise repugnant thereto which shall have been made under the same provisions.

Lieutenant-Governors and Chief Commissioners to be Members *ex officio* of the Governor General's Council for

3. Whenever the Governor General in Council shall hold a meeting for the purpose of making laws and regulations at any place within the limits of any territories now or hereafter placed under the administration of a Lieutenant-Governor or a Chief Commissioner, the Lieutenant-Governor or Chief Commissioner respectively shall be *ex officio* an additional member of the Council of the Governor General

* The despatch is to be found in Sir Henry Maine's Minutes, No. 69, at pp 157—158.

for that purpose, in excess (if necessary) of the maximum number of twelve specified by the said Act. the purpose of making laws and regulations.

For digest, see *Ilbert*, p. 200.

4. [*Rep. 46 & 47 Vict., c. 39.*]

This section repealed section 49 of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85).

5. Whenever any measure shall be proposed before the Governor General of India in Council whereby the safety, tranquillity, or interests of the British possessions in India, or any part thereof, are or may be, in the judgment of the said Governor General, essentially affected, and he shall be of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority in Council then present shall dissent from such opinion, the Governor General may, on his own authority and responsibility, suspend or reject the measure in part or in whole, or adopt and carry it into execution ; Procedure in case of difference between the Governor General and the majority of his Council.

but in every such case any two members of the dissentient majority may require that the said suspension, rejection, or adoption as well as the fact of their dissent, shall be notified to the Secretary of State for India, and such notification shall be accompanied by copies of the minutes (if any) which the members of the Council shall have recorded on the subject.

Lord Lytton proceeded under this section in March, 1879, in exempting certain imported cotton-goods from custom-duty, and His Excellency's action was approved by Her Majesty's Government. See Finance Department's Pros., June, 1879, Nos. 324—329, and the Secretary of State's despatch No. 261, dated the 17th July, 1879.

For digest and notes, see *Ilbert*, pp. 184—187.

6. Whereas it is expedient that additional facilities should be given for the employment of natives of India of proved merit and ability in the Civil Service of Her Majesty in India : Power to appoint natives of India to certain offices without certificate from the Civil Service Commissioners.

Be it enacted, that nothing in the "Act for the Government of India," twenty-one and twenty-two Victoria, chapter 106*, or in the "Act to confirm certain appointments in India, and to amend the law concerning the Civil Service there," twenty-four and twenty-five Victoria, chapter 54†, or in any other Act of Parliament or other law now in force in India, shall restrain the authorities in India by whom appointments are or may be made to offices, places, and employments in the Civil Service of Her Majesty in India from appointing any native of India to any such office, place, or employment, although such native shall not have been admitted to the said Civil Service of India in manner in section 32 of the first-mentioned Act provided, but subject to such rules as may be from time to time prescribed by the Governor General in Council, and sanctioned by the

* i.e., the Government of India Act, 1858.

† i.e., the Indian Civil Service Act, 1861.

- (b) the Public Expenditure ;
- (c) the Public Ways and Means, including Loans to and from the Public Treasury ;
- (d) the Management of the Public Funds ;
- (e) Taxation ;
- (f) Provincial and Local Finance ;
- (g) the Borrowing of Public Bodies ; and
- (h) Alienations of Revenue and of Land :
- (ii) Separate Revenue, that is to say—
 - (a) Opium ;
 - (b) Salt ;
 - (c) Stamps ;
 - (d) Excise ;
 - (e) Customs, including Cotton Duties ; and
 - (f) Assessed Taxes :
- (iii) the Post Office, that is to say—
 - (a) Post Office, including Money Orders ; and
 - (b) Savings Banks :
- (iv) Currency and Banking, that is to say—
 - (a) the Mints ;
 - (b) Coinage ;
 - (c) Paper Currency ; and
 - (d) Presidency Banks :
- ~~(v) Commerce, that is to say—~~
 - (a) Trade and Commerce ;
 - (b) Merchandise Marks ;
 - (c) Merchant Shipping ;
 - (d) Ports, Port-dues and Pilotage ; and
 - (e) Lighting of Coasts :
- (vi) ~~(vii)~~ Salaries and Allowances, that is to say—
 - (a) the Pay and Allowances of Public Officers ;
 - (b) Leave to Public Officers ; and
 - (c) Pensions and Gratuities :
- (v) ~~(viii)~~ the Civil Account Department .
 - (vi) ~~(ix)~~ Stationery and Printing :
 - ~~(ix)~~ the Supply of Stores ; and
 - (x) Statistics.

II.—All business under the above heads from the Hyderabad Assigned Districts.

[6] (K) MILITARY DEPARTMENT. ^{Supply (June 1905)}

Sir Edmund

All business connected with the administration of—

- (i) the Army ;
- (ii) Local Corps in Rajputana and Central India
 ~~and the Hyderabad Contingent ;~~
- ~~(iii) Contingents ;~~
- (iv) Military Works ;

Cases of
major im-
portance.

5. (1) Any case which is, in the opinion of the Member in charge of the Department to which the subject belongs, of major importance, shall be submitted, with the orders proposed by that Member, to the Governor General for opinion.

(2) Any case which is of special importance and urgency, may be submitted by the Secretary in the Department to which the subject belongs, direct to the Governor General, who may either pass orders on it himself or send it for disposal to the Member in charge of that Department:

Provided that, when a case is so submitted to the Governor General, the Member in charge shall be informed of the fact by the Secretary.

Submission of
any case to
Governor
General.

6. Any case may, at any stage if the Secretary in the Department to which the subject belongs, thinks fit, be submitted by him to the Governor General.

Confirmation
of capital sen-
tences passed
in Andamans.

7. (1) Where under section 13, clause (c), of the Andaman and Nicobar Islands Regulation, 1876,* a sen- III of 1876.
tence of death passed by the Court of Session at Port Blair is submitted for the confirmation of the Governor General in Council, the order proposed by the Member in charge of the Home Department shall, in the first instance, be referred for opinion to the Member in charge of the Legislative Department.

(2) If both the Members aforesaid are in agreement as to the order which should be passed, such order shall be carried out, unless, for any special reason or under any other rule, a reference to the Governor General is considered necessary.

(3) If the two Members aforesaid are not in agreement, the case shall be submitted to the Governor General for orders.

Proposal to
overrule
Local
Government.

8. Where it is proposed in any Department to negative the recommendation, or to overrule the decision, of a Local Government†, the consent of the Governor General shall be obtained before any orders to that effect are issued.

Inter-depart-
mental refer-
ence and
differences.

9. (1) Every case, the subject of which concerns another Department, shall, unless it is one of extreme urgency, be referred for consideration to such Department before it is circulated to the Members or brought before a meeting of Council, and before any orders are issued.

* The provision referred to, as amended by s. 3 (a) of the Andaman and Nicobar Islands Regulation, 1884 (1 of 1884), is as follows:—

"13. The Code of Criminal Procedure (Act X of 1882) shall be subject to the following modifications:

(c) The functions of the High Court as a Court of reference shall be discharged by the Governor General in Council."

† The expression "Local Government" includes a Chief Commissioner—see Home Department's Office Memorandum No. 1740 (Public), dated the 25th August, 1898.

(2) If all the Departments concerned are not in agreement regarding a case dealt with under this rule, it shall be submitted by the Secretary in the Department to which the subject belongs, to the Governor General for orders as to its being brought before a meeting of Council under Part V.

10. Every order of the Governor General in Council shall be signed by either a Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or an Assistant Secretary to the Government of India, and such signature shall be the proper authentication thereof. Authenticat-
tion of orders.

Part III.—Consulting the Department of Finance and Commerce.

11. (1) No proposal involving an abandonment of revenue for which credit has been taken in the Budget, or involving expenditure which has not been provided for in the Budget, or which, though provided for, has not been specifically sanctioned, shall be brought forward for the consideration of the Governor General in Council, nor shall any orders giving effect to such a proposal issue, without a previous reference to the Department of Finance and Commerce. Proposals
affecting the
Budget and
finances.

(2) This rule shall be subject to the following exceptions, namely :—

(a)—In cases which, in the opinion of the Governor General, require great secrecy or despatch, it shall not be necessary for any Department to make a previous reference to the Department of Finance and Commerce before issuing orders; but every order so issued shall have the sanction in writing of the Governor General and be communicated to the Department of Finance and Commerce without delay.

(b)—The Military Department may, without making a previous reference to the Department of Finance and Commerce, issue orders sanctioning any expenditure which does not require the previous sanction of the Secretary of State in Council and does not involve any outlay in excess of the total Budget-grant to the Military Department or a reappropriation from any one to any other grant or minor head of Account.

(c)—The Public Works Department may, without making a previous reference to the Department of Finance and Commerce, issue orders sanctioning any expenditure which does not require the previous sanction of the Secretary of State in Council,—

in the case of the maintenance and working expenses of railways and other works producing revenue; and

in any other case, if the proposed expenditure does not involve outlay in excess of the Budget grant to the Public Works Department or a reappropriation from any one to any other major head of Account.

(g) Nothing in the foregoing clauses (b) and (c) shall be deemed to authorize the contravention of any rule or order of the Department of Finance and Commerce for the time being in force, or the introduction of any new principle or practice likely to lead to increase of expense.

Official references to be made in certain cases.

12. (r) Proposals and questions affecting the pay and allowances of any officer on any Secretariat Establishment of the Government of India, or the application of financial rules to any such officer, or respecting any expenditure by any such Secretariat, shall be referred to the Department of Finance and Commerce by official correspondence, and not by unofficial reference.

(2) In every such case the referring Department shall, for the purposes of rule 9, sub section (2), be deemed to be the Department to which the subject belongs.

Proposals affecting subjects belonging to Department of Finance and Commerce.

13. Unless the Governor General otherwise directs, no proposal affecting any subject which belongs to the Department of Finance and Commerce, shall be brought before a meeting of Council or be circulated to the Members unless it has originated in, or has been referred to and considered by, that Department.

Part IV.—Consulting the Legislative Department.

Legislative Department to be consulted as to drafts of statutory rules.

14. Where it is proposed in an Executive Department to make or to sanction any rules in the exercise of a statutory power conferred on the Governor General in Council, the draft of the rules shall, before orders making or sanctioning the same are issued, be referred to the Legislative Department for consideration.

Other cases in which Legislative Department may be consulted.

15. The Executive Departments may consult the Legislative Department on the following subjects, namely:—

- (a) the construction of Statutes, Acts and Regulations ;
- (b) questions on any general legal principle arising out of any case ;
- (c) proposed amendments of the law ; and
- (d) notifications to be issued under any enactment :

Provided that the Legislative Department shall not be asked to advise on—

- (e) cases which are connected with legal proceedings commenced or impending, or which are likely to involve any claim against the Government, or

questions connected with the practice and procedure of the Courts ;

(f) cases on which the Advocate General of Bengal has advised ; or

(g) cases in which any Advocate General or any Government Advocate could advise in the ordinary course of his duties, and as to which there is no special reason for referring to the Legislative Department.

16. Where an Executive Department consults the Legislative Department under rule 15, it shall, except in regard to notifications to be issued under enactments, state, with as much precision as possible, the facts of the case and the point or points on which the advice of the Legislative Department is desired, such statement being initiated by an officer not below the rank of Deputy Secretary.

Part V.—Bringing of Cases before Meetings of Council.

17. The Governor General, if he concurs with the Member in charge of the Department to which the subject belongs, will determine whether and when a case shall be brought before a meeting of Council and also whether the papers shall be further circulated before action is taken upon them, and, if so, whether they shall be circulated to all, or only to some, of the Members :

Provided that, if it is proposed to legislate in the Council of the Governor General, the papers shall, unless the Governor General otherwise directs, be circulated to all the Members and brought before a meeting of Council :

Provided, also, that every proposal for legislation in the Council of the Governor General shall, if any Member so requires, be brought before a meeting of Council with a view to determining whether the Government should deal with it upon united counsels or should leave it an open question

18. If in any case the Governor General does not concur with the Member in charge of the Department to which the subject belongs, the papers of the case shall either be circulated to all the Members and then brought before a meeting of Council or, if the Governor General so directs, be at once brought before a meeting of Council

19. In the case of a proposal referred to the Department of Finance and Commerce under rule 11 or rule 13, if the Member in charge of that Department does not concur with the Member in charge of the referring Department and the Governor General concurs with the Member in charge of the Department of Finance and Commerce, the papers shall be circulated to the Members or be brought before a meeting of Council at once, as the Governor General shall direct ; but no orders shall be issued on the proposal, unless

the Governor General otherwise directs, until the instructions of the Secretary of State in Council have been received thereon.

Submission
of cases at
meetings of
Council and
orders there-
at.

20. When a case is brought before a meeting of Council, the Secretary in the Department to which the subject belongs, and, if the case concerns another Department, the Secretary in that Department, if specially required to do so, shall attend and, before the case is taken into consideration, the Secretary in the Department to which the subject belongs, or such other Secretary, shall state briefly the point or points on which a decision is required, and, if he thinks fit, or if the notes on the case have not been seen by all the Members, the complete history of the case, recapitulating in order the substance of the opinion (if any) given thereon by each Member who has examined it.

(2) The Governor General will then request the Member in charge of the Department to which the subject belongs, to make such observations as he thinks fit on the point or points thus submitted for decision.

(3) When a decision upon the point or points under discussion has been arrived at, the Secretary in the Department to which the subject belongs, shall take down in writing and read out the order proposed, and such order shall, after its terms have been finally approved, be initialled by the Governor General and placed with the notes of the case.

Part VI.—Cases involving Legislation in the Council of the Governor General.

Duties and
functions of
Legislative
Department
in respect of
legislation.

21. Save as otherwise provided by rule 23, the Legislative Department is not, in respect of legislation, an originating or initiating Department, and its proper function is to put into technical shape projects of law of which the policy has been affirmed elsewhere.

Procedure in
cases involv-
ing legisla-
tion.

22. (1) Save as aforesaid, every case, which involves legislation in the Council of the Governor General, shall be considered in, and if necessary transferred to, the Executive Department to which the subject belongs, and there the necessity for legislation and all points connected therewith, except the technical details of the Bill (if any) to be introduced, shall be discussed and settled.

(2) If the case is merely formal or of trifling importance, the Member in charge will pass such orders thereon as he thinks fit.

(3) If the case is of greater importance, or if such Member thinks that legislation is expedient, the case shall be submitted to the Governor General and be dealt with in the same manner as business under Part V.

(4) If legislation is decided upon, the papers shall be sent to the Legislative Department with an Official Memorandum indicating with sufficient precision the lines on which

it has been decided to legislate, and requesting the Legislative Department to take steps for the introduction in Council of the requisite Bill.

Such an Official Memorandum should not, except when the Secretary in the Department to which the subject belongs, otherwise directs, be issued until it has been referred unofficially to, and accepted as sufficiently precise by, the Legislative Department.

(5) After the issue of an Official Memorandum as aforesaid, all correspondence regarding the legislation decided upon shall be conducted in the Legislative Department, to which all petitions and communications in respect thereof shall, if necessary, be transferred, copies of all such correspondence being, from time to time, sent by that Department to the Executive Department to which the subject belongs for record.

23. (1) Nothing in rules 21 and 22 shall apply to measures for the codification of the substantive law* or for the consolidation, pure and simple, of existing enactments, or to legislation of a formal character, such as that involved in "Repealing and Amending" and "Short Titles" Bills. Power of Legislative Department to initiate certain legislation.

(2) Any such legislation as aforesaid may be initiated in the Legislative Department, which shall, before publication, transmit a copy of the draft Bill proposed by it, together with the Statement of Objects and Reasons, to the Secretary of State for information, and shall also send a copy to the Executive Department to which the subject belongs, for consideration as an administrative measure.

(3) The Executive Department aforesaid shall forthwith make such inquiries as it thinks fit, informing all Local Governments and others consulted that the matter is urgent, and sending the Legislative Department a copy of every communication received by it on the subject.

(4) The opinion of the Executive Department aforesaid shall, before the expiration of six months from the receipt in it of the draft Bill, be sent to the Legislative Department, and the Legislative Department may, on receiving such opinion or on the expiration of the period aforesaid without the receipt of any such opinion, submit the Bill to the Governor General for orders and, if the Governor General so directs, take steps for its introduction in Council.

24. (1) Save as hereinafter provided by this rule, every proposal for legislation in the Council of the Governor General which the Government of India desires to initiate shall be reported to the Secretary of State, and the necessary Bill shall not be introduced until the Secretary of Proposals for legislation to be ordinarily reported to Secretary of State before introduction of Bills.

* A scheme for the codification, by the Legislative Department, of the substantive law was settled in the course of the correspondence resting with the Government of India's despatch to the Secretary of State, No. 34 (Legislative), dated the 10th May, 1877,—see *Selection of Papers relating to the Constitution and Functions of the Indian Legislative Councils*, at pp. 232—236.

State has had an opportunity of communicating with the Government of India on the subject.

(2) The following shall be excepted from the operation of this rule, namely :—

- (a) consolidation Bills, pure and simple ;
- (b) cases in which the legislation proposed is, in the opinion of the Government of India, of a purely formal or unimportant character ; and
- (c) cases in which the legislation proposed cannot, in the opinion of the Government of India, be, without serious evil, delayed in order to admit of a prior report to the Secretary of State.

Additional
Members'
Bills.

25. (1) Whenever an Additional Member gives notice, under rule 16 of the Rules for the Conduct of Legislative Business in the Council of the Governor General*, of his desire to move for leave to introduce a Bill in accordance with the provisions of section 19 of the Indian Councils Act, 1861, the Legislative Department shall forthwith send a copy of the notice, together with a copy of the Bill and Statement of Objects and Reasons (if any), to the Executive Department to which the subject belongs, and the matter shall be dealt with in the same manner as business under Part V. 24 & 25 Vict., c. 67.

The utmost expedition in this connection is necessary in order to enable the Executive Department concerned to obtain, within the short period of notice (three days) required by rule 16 of the Rules referred to, a decision as to whether the motion is to be opposed by the Government or not.

(2) Whenever an Additional Member introduces a Bill in Council, the Legislative Department shall send a copy of the Bill, together with the Statement of Objects and Reasons, to the Executive Department to which the subject belongs, and such Bill shall be dealt with in the same manner as business under Part V, unless it accompanied the notice referred to in sub-section (1) of this rule and has already been dealt with thereunder.

Part VII.—Cases involving Legislation in Local Councils.

Legislative
Department
to deal with
communications regard-
ing draft
Bills, etc.

26. (1) Every communication made by a Local Government to the Government of India asking for leave to introduce a Bill, or regarding a Bill which has been introduced, in the local Council, or submitting a law for the assent of the Governor General under section 40 of the Indian Councils Act, 1861, shall be addressed to the Secretary to the Government of India in the Legislative Department, and, if such a communication is received in any other Department, that Department shall at once transfer it to the Legislative Department. 24 & 25 Vict., c. 67.

(2) Nothing in this rule shall be construed to apply to any correspondence or communication regarding a proposal for legislation in a local Council unless and until the stage is reached at which leave to introduce a Bill is asked for. All correspondence before that stage shall be

* See post, p. 81.

conducted in, and, if necessary, transferred to, the Executive Department to which the subject belongs.

27. (1) Where a draft Bill submitted by a Local Government contains penal clauses, the Legislative Department shall refer it for consideration of the penal clauses to the Home Department before any orders, sanctioning the same or otherwise, are issued.*

Reference to Executive Departments before previous sanction is given.

24 & 25 Vict.,
c. 67.
55 & 56 Vict.,
c. 14.

(2) Where a draft Bill submitted by a Local Government requires the previous sanction of the Governor General under section 43 of the Indian Councils Act, 1861,† or section 5 of the Indian Councils Act, 1892,‡ the Legislative Department shall refer it for consideration as an administrative measure to the Executive Department to which the subject belongs, and simultaneously to any other Department concerned, before any orders are issued.

28. (1) When a draft Bill is received from a Local Government, other than the Government of Madras or Bombay, for report to the Secretary of State, the Legislative Department shall forward it forthwith, without any discussion of its merits, with a despatch to the Secretary of State, a copy of which shall be forwarded to the Local Government for information, and shall then refer the Bill for consideration as an administrative measure to the Executive Department to which the subject belongs, and simultaneously to any other Department concerned, and shall also itself examine it, before any orders are issued.

Procedure in case of draft Bill reported to Secretary of State before introduction.

(2) When a draft Bill is reported to the Secretary of State by the Government of Madras or Bombay and a copy of the Local Government's despatch to the Secretary of State is received, the Legislative Department shall keep a record of the date of the despatch, and shall then refer the draft for consideration as an administrative measure to the Executive Department to which the subject belongs, and simultaneously to any other Department concerned, and shall also itself examine it, before any orders are issued.

(3) As soon as possible and before the expiration of two months from the date of the despatch referred to in sub-section (1) or sub-section (2), as the case may be, the Legislative Department shall submit the papers to the Governor General for orders as to whether any, and (if any) what, communication shall be addressed to the Local Government regarding it. Such communication (if any) shall be issued so as to reach the Local Government before the expiration of the two months aforesaid.

Where objection is taken to a Bill as an administrative measure, the necessary communication should, if the Legislative Department so desires, be drafted by the Executive Department taking the objection for issue by the Legislative Department.

(4) If before the issue of such a communication as aforesaid a despatch on the subject has been received from the Secretary of State, the contents thereof shall be

* See note to section 43 (4) of the Indian Councils Act, 1861, *ante*, p. 20.

† See *ante*, p. 20.

‡ See *ante*, p. 38.

introduced in the communication to the Local Government. If no despatch has been received, the fact shall be stated in the communication to the Local Government, and it shall further be intimated that the subsequent receipt by the Government of India of any orders from the Secretary of State before the expiration of the two months aforesaid will be notified (by telegram, if necessary) to the Local Government.

Explanation.—The examination of a draft Bill by the Legislative Department under this and the following rules shall ordinarily be confined to general legal principles (including the consideration of the question whether the measure proposed is within the powers of the local legislature concerned), and shall not be deemed to involve the examination of matters of form or details of drafting.

Procedure in case of draft Bill introduced without prior report to Secretary of State. 29. When a Bill has been introduced in a local Council without a prior report to the Secretary of State and is, along with the explanatory communication required of the Local Government in such a case, received by the Government of India, the Legislative Department shall refer the Bill for consideration as an administrative measure to the Executive Department to which the subject belongs, and simultaneously to any other Department concerned, and shall also itself examine it, before submitting the papers to the Governor General for orders as to whether any, and (if any) what, communication shall be addressed to the Local Government regarding it.

Reference to Executive Departments regarding amendment in Council. 30. When, after a Bill has been introduced in a local Council, an amendment in it is reported for orders, the Legislative Department shall refer it for consideration as an administrative measure to the Executive Department to which the subject belongs, and simultaneously to any other Department concerned, and shall also itself examine it, before any orders are issued.

Reference to Executive Departments before submission of law for Governor General's assent and transmission to Secretary of State. 31. When a law passed by a local Council is submitted for the assent of the Governor General under section 40 of the Indian Councils Act, 1861,* the Legislative Department shall refer it to the Executive Department to which the subject belongs, and simultaneously to any other Department concerned, for consideration as an administrative measure, before submitting it to the Governor General for assent and transmitting an authentic copy thereof, if assented to, the Secretary of State, as required by section 41 of the Statute aforesaid. 24 & 25 Vic., c. 67.

Copies of correspondence to be sent to Secretary of State and Executive Departments concerned. 32. The Legislative Department shall, without delay, transmit copies of all correspondence regarding the Bills of local Councils to the Secretary of State for information, and shall also, from time to time, send copies of the same to the Executive Department concerned for record.

* See ante, p. 18.

Part VIII.—Making of Regulations.

33. (1) Where a Local Government proposes the draft of a Regulation to the Government of India in pursuance of the provisions of the Government of India Act, 1870*, the correspondence shall be dealt with in, and, if necessary, transferred to, the Executive Department to which the subject belongs, and it shall there be dealt with, as far as may be, in the same manner as business under Part V:

Executive Department to deal with proposals for the making of Regulations.

Provided that every draft of a Regulation proposed as aforesaid shall, under the orders of the Governor General, be brought before a meeting of Council.

(2) If the draft is approved at a meeting of Council as aforesaid, a copy of it shall be sent by the Executive Department to the Legislative Department with an Official Memorandum stating that it has been so approved as an administrative measure and requesting that it be submitted to the Governor General for assent.

(3) The Legislative Department shall thereupon submit the Regulation for the assent of the Governor General, and, if it is assented to, shall give it the proper serial number for the year, cause it to be published in the manner prescribed by law, and transmit an authentic copy to the Secretary of State for information. A copy shall also be sent to the Executive Department concerned for record.

Part IX.—Making and Promulgation of Ordinances.

34. Every proposal for the making and promulgation of an Ordinance under section 23 of the Indian Councils Act, 1861†, shall be dealt with, as far as may be, in the same manner as business under Part VI.

Proposals regarding Ordinances how to be dealt with.

Part X.—Orders, Notes and Minutes by Governor General and Members.

35. The orders of the Governor General and of Members and notes written by the Governor General and by Members, before oral discussion in Council, shall be initialled only, and no such order or note shall be entered in the Proceedings of the Government of India, save by the express direction of the Governor General and with the consent of the writer, whose signature in full shall in that event first be obtained.

Orders and notes of Governor General and Members.

36. After oral discussion in Council a minute may be recorded by any Member to express either partial or entire dissent from a despatch to the Secretary of State or from an Order in Council, or from a proposed despatch or Order.

Minutes of dissent after oral discussion in Council.

37. If a Member desires to record a minute under circumstances other than those mentioned in rule 36, he shall, except as provided by section 5 of the Government of India Act, 1870‡, first obtain the consent of the Governor General in Council.

Other minutes.

* See ante, pp. 39—44.

† See ante, p. 13.

‡ See ante, p. 43.

33 Vict., c. 3.

24 & 25 Vict., c. 67.

33 Vict., c. 3.

Minutes to be entered in Proceedings. 38. Every minute shall be entered at length in the Proceedings of the Government of India :

Provided that a minute shall not be so entered if it refers directly to any note written by a Secretary or by a Member and not so entered, or to papers not on record or not previously published.

Part XI.—Observance of, and Departure from, Rules.

Secretaries responsible for observance of rules. 39. (1) The Secretary in each Department shall be responsible for the careful observance therein of these rules.

(2) Where a Secretary considers that there has been any departure from these rules, he shall personally bring the matter to the notice of the Governor General.

Joint and Deputy Secretaries. 40. For the purposes of these rules, the expression "Secretary" shall be deemed to include a Joint Secretary, and any of the functions of a Secretary, other than those referred to in rules 5, 6 and 39, may, with the approval of the Governor General or the Member in charge of the Department concerned, as the case may be, be discharged by a Deputy Secretary.

Power for Governor General to permit departure from rules. 41. The Governor General may, from time to time, if he thinks fit, permit any departure from these rules.

EI GIN,

Governor General.

SECRETARIAT INSTRUCTIONS.*

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* For a Comparative Statement showing the origin of these Secretariat Instructions, which were issued on the 19th August, 1898, see App. VI, *post*, pp. 119—120.

20. Secretaries responsible for observance of these Instructions.
21. Joint and Deputy Secretaries.

SECRETARIAT INSTRUCTIONS.

[19TH AUGUST, 1898]

1. It shall be the duty of the Secretary in the Department to which the subject belongs, to submit every case which he is not, by the practice of the Department, competent himself to dispose of, in a complete form, ready for orders, to the Governor General or the Member in charge of the Department, as the case may be.

Duty of Secretary to see that cases are complete.

24 & 25 Vict.,
c. 67.

Explanation.—For the purposes of these Instructions, the expression “the Department to which the subject belongs,” has the same meaning as in the Rules of Business* made under section 8 of the Indian Councils Act, 1861†.

2. If a case is received in the Department to which the subject belongs, in an incomplete form, the Secretary may call for the information necessary to complete it before submission to the Governor General or the Member in charge, as the case may be.

Power for Secretary to call for further information.

3. (1) Every case submitted to the Governor General or the Member in charge, as the case may be, shall, unless the Secretary considers it unnecessary, be accompanied by a précis stating the facts, clearly indicating the points for decision and mentioning any laws, precedents or parallel cases applicable thereto.

(2) Précis shall be plain and concise, and may be printed, lithographed, type-written or otherwise legibly transcribed.

4. (1) The opinion of the Secretary on every case submitted by him to the Governor General or the Member in charge, as the case may be, shall be subjoined in a separate note, temperately written and free from personal remarks.

Opinion of Secretary.

(2) Where a note, précis or draft prepared by a Deputy Secretary, Under Secretary or Assistant Secretary, or by a member of the clerical establishment, appears to the Secretary, on examination, to be correct and sufficiently full, the Secretary may submit it, simply countersigned with his initials, to the Governor General or the Member in charge, as the case may be.

5. (1) Every note intended as a suggestion for action shall be legibly written upon paper of foolscap size and with a broad inner margin, and not, unless the suggestion made is short and simple, such as “Approve” or “Copy to Secretary of State,” upon the letter or other communication under consideration or the docket thereof.

Notes.

(2) Notes intended to be filed shall not be written upon small slips of paper.

(3) References of no permanent importance, such as requests for former papers, calls for proofs or drafts, orders to print, etc., shall be written on separate slips and destroyed without being filed.

* See rule 1 of the Rules referred to, *ante*, p. 47.

† See *ante*, p. 8.

Submission of
draft with
case.

6. A draft letter, resolution, notification or telegram, as the case may be, may be prepared at any stage of a case if it appears that the consideration and disposal of the case would be facilitated by submitting it with a draft.

Cases refer-
red to other
Departments.

7. (1) Where a case is referred by one Department to another, the Secretary in the Department referred to shall, unless he considers it unnecessary to do so, submit it to the Member in charge with a note drawing attention to such additional information as may be available in the Department and to any relevant rules thereof.

(2) If the Secretary further deems it necessary to point out to the Member in charge any apparent errors in statements of fact or questionable conclusions on points of law, ruling or precedent, which have been overlooked in the note of any other Member, he shall be scrupulously careful to do so with all the respect due to such other Member; and his observations shall not extend to the criticism of opinions expressed by any Member as apart from the facts.

(3) In every case referred by one Department to another, the notes written in the Department referred to shall be on separate sheets from the notes written in the referring Department; and the Secretary in each Department shall be responsible that the notes which leave it, are expressed in terms consistent with the proprieties and courtesies of official correspondence.

Notes sent
to another De-
partment not
to be referred
outside Secre-
tariat without
consent.

8. (1) Notes written in one Department and sent to another shall be treated as confidential and shall not be referred to any officer outside the Secretariat except with the general or specific consent of the Department to which they belong.

(2) Where a general consent has been given to the reference of notes to an officer outside the Secretariat, such consent shall not be construed to cover such a reference when the papers are marked "Confidential," or in cases—

(a) affecting the excepted officer personally, or in which his official conduct is under consideration; or

(b) in which the emoluments or allowances of any subordinate of the excepted officer are discussed.

(3) The officers in regard to whom a general consent to the reference of notes by the Departments hereinafter indicated has been given, are the following:—

(A) HOME DEPARTMENT.

(i) General Superintendent of Operations for the Suppression of Thagi and Dakaiti; and

(ii) Chief Inspector of Explosives.

(B) REVENUE AND AGRICULTURAL DEPARTMENT.

- (i) Inspector General of Forests ;
- (ii) Surveyor General of India ; and
- (iii) Inspector General, Civil Veterinary Department.

(C) FOREIGN DEPARTMENT.

- (i) General Superintendent of Operations for the Suppression of Thagi and Dakaiti ; and
- (ii) Inspector General, Imperial Service Troops.

(D) DEPARTMENT OF FINANCE AND COMMERCE.

- (i) Comptroller General ;
- (ii) Comptroller, India Treasuries ;
- (iii) Director General of the Post Office ;
- (iv) Commissioner, Northern India Salt Revenue ; and
- (v) Director General of Statistics.

(E) MILITARY DEPARTMENT.

- (i) Adjutant General in India ;
- (ii) Quarter Master General in India ;
- (iii) Principal Medical Officer, Her Majesty's Forces in India ;
- (iv) Director General of Ordnance in India ;
- (v) Director General of Military Works ;
- (vi) Commissary General-in-Chief ;
- (vii) Director, Army Remount Department ; and
- (viii) Director, Royal Indian Marine.

(F) PUBLIC WORKS DEPARTMENT.

Director General of Telegraphs.

(G) ANY DEPARTMENT.

- (i) Director General, Indian Medical Service, and Sanitary Commissioner ;
- (ii) Advocate General, Bengal ;
- (iii) Standing Counsel to the Government of India ; and
- (iv) Government Solicitor, Calcutta :

Provided that no notes shall be referred to the Advocate General, the Standing Counsel or the Government Solicitor except on the order of an officer not below the rank of Secretary, and that no notes, other than those of the referring Department, shall be so referred without the consent of the Department to which they belong.

9. Précis and notes prepared under rules 3, 4 and 5, Entry of or by officers outside the Secretariat under rule 8, shall not be entered in the Proceedings of the Government of India, ^{precis and} ^{notes in} ^{Proceedings.} save by the express direction of the Governor General.

10. (1) Where a paper which has been printed, is re-Printed quired for information or reference, a printed copy, and not papers. the original, shall, in the absence of orders to the contrary, be submitted.

(2) Where a paper which has been printed, concerns more than one Department, a sufficient number of copies shall be sent by the Department by which it was printed, to each of the other Departments concerned.

Council cases.

II. (1) The Secretary in each Department shall be responsible that no case the subject of which belongs to the Department, shall be brought before a meeting of Council without having been previously seen by all the Members :

Provided that this rule may be relaxed in cases of special urgency at the discretion of the Secretary, such discretion being exercised with due regard to the inconvenience likely to be occasioned by any ill-considered departure from it.

(2) Where time permits and the case is of sufficient importance, printed copies of the papers and notes connected therewith shall, prior to the meeting of Council before which the case is to be brought, be distributed by the Secretary to the Governor General and all the Members, and the copies so received shall ordinarily be returned to the Secretary by the Members as soon as the Order in Council on the case has been made.

Telegrams to, and despatches to and from, the Secretary of State.

12. (1) Every telegram to the Secretary of State shall, unless it relates only to matters of routine or matters of fact, be submitted to the Governor General before issue.

(2) Every despatch to the Secretary of State shall be submitted in draft to the Governor General or the Member in charge of the Department to which the subject belongs, as the case may be, unless the Secretary is, by the practice of the Department, competent himself to order the issue of the draft.

(3) The circulation for signature of every despatch to the Secretary of State shall, except in cases of urgency, commence, if possible, at least six days before the departure of the mail, in order that each Member may have leisure to study it and the papers connected therewith. Such papers, if the subject is one of importance or interest and has not been brought before a meeting of Council, shall be circulated along with the despatch.

(4) Every despatch to or from the Secretary of State issuing from, or received in, the Foreign Department shall be circulated as promptly as possible, first, to the Governor General for signature or perusal, as the case may be, and then, to all the Members in the most convenient order with regard to their places of residence.

(5) Every despatch to the Secretary of State issuing from any Department other than the Foreign Department shall be circulated for signature, first, to the Member in charge, then, to the other Members in the order aforesaid, and, finally, to the Governor General.

(6) Every despatch from the Secretary of State received in any Department other than the Foreign Department shall be circulated as promptly as possible, first, to the Member in charge, then, to the Governor General, and, finally, to the other Members in the order aforesaid.

21 & 22 Vict.,
c. 106. 13. Every despatch to the Secretary of State issuing under section 28 of the Government of India Act, 1858, * shall be enclosed in double covers, the inner cover being marked "Secret" and addressed to the Secretary of State by name. Secret despatches to the Secretary of State are transmitted from the Department to which the subject belongs, even in cases where, if they had not been secret, they would have been transmitted from the Department of Finance and Commerce.

Secret
despatches to
Secretary of
State.

14. (1) The Secretary in each Department shall be responsible for the correctness of the enclosures to every despatch to the Secretary of State issuing therefrom, and for the correctness of all papers sent therefrom for publication in the Gazette. Enclosures to despatches to Secretary of State and Gazette publications.

(2) The enclosures to every despatch to the Secretary of State shall be numbered and a correct list of them prepared; and either the enclosures themselves or the list shall be signed or initialled by the Secretary or, under the Secretary's instructions, by an officer not below the rank of Assistant Secretary.

(3) All papers sent for publication in the Gazette shall be signed or initialled by the Secretary or, under the Secretary's instructions, by an officer not below the rank of Assistant Secretary.

15. A copy of every despatch to the Secretary of State respecting intended legislation in the Council of the Governor General shall, when issued by an Executive Department, be forwarded to the Legislative Department for record. Copies of legislative despatches to be sent to Legislative Department.

16. In the printed keep-withs attached to the collection copies of the Proceedings of the Government of India, the Names of writers of notes to be printed in full.

* The section referred to is as follows:—

"28. Any despatches to Great Britain which might, if this Act had not been passed, have been addressed to the secret committee of the Court of Directors, may be marked 'secret' by the authorities sending the same; and such despatches shall not be communicated to the members of the Council, unless the Secretary of State shall so think fit and direct."

Section 20 of the East India Company Act, 1793 (33 Geo. 3, c. 53), took power for the appointment of a secret committee of directors, and section 22 provided that—

"When any of the governments or presidencies in India shall be of opinion that any of their despatches to Great Britain concerning the government of the said territories and acquisitions, or the levying of war or making peace, or negotiations or treaties with any of the native princes or states in India, shall be of a nature to require the same to be kept secret, it shall be lawful for the said governments or presidencies respectively to address their despatches requiring such secrecy under cover, sealed with their seals, unto the said secret committee of directors of the said company for the inspection of such committee, and that immediately upon the arrival of such despatches so addressed, the said secret committee of directors shall deliver the same or copies thereof to the said board" (i.e., the Board of Commissioners for the Affairs of India).

Section 36 of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), subsequently provided for the despatch, by the Board of Commissioners for the Affairs of India through the Secret Committee of communications on matters which seemed to the Board to require secrecy.

name of the Governor General, Member or Secretariat officer, as the case may be, shall be printed in full at the foot of each note written by him. In the case of a note written by the Governor General or by a Member, the letters after the first letter of the surname shall be enclosed in brackets.

The object of the brackets is to render "notes" readily distinguishable from "minutes" written by Members.

Letters to Ambassadors, etc., to be signed by Secretary. **17.** Every letter addressed to an Ambassador or Minister of Her Majesty or to a Foreign or Colonial Government shall be signed by the Secretary in the Department to which the subject belongs.

Personal references to Members. **18.** If a Member desires to refer a case in the Department of which he is in charge, to another Member personally, he shall obtain the consent of the Governor General before doing so.

Differences of opinion in Council not to be disclosed without consent of Governor General. **19.** Where papers are communicated to Local Governments or to the public, all matter indicating the existence of a difference of opinion in Council shall be removed, unless the consent of the Governor General to its retention is first obtained.

Secretaries responsible for observance of these Instructions. **20. (1)** The Secretary in each Department shall be responsible for the careful observance therein of these Instructions.

(2) Where a Secretary considers that there has been any departure from these Instructions, he shall personally bring the matter to the notice of the Governor General.

Joint and Deputy Secretaries. **21.** For the purposes of these Instructions, the expression "Secretary" shall be deemed to include a Joint Secretary, and any of the functions of a Secretary, other than those referred to in the proviso to Instruction 8 and in Instructions 17 and 20, may, with the approval of the Governor General or the Member in charge of the Department concerned, as the case may be, be discharged by a Deputy Secretary.

By order,

J. P. HEWETT,

Secretary, Home Department.

INSTRUCTIONS TO LOCAL GOVERNMENTS REGARDING LEGISLATION IN LOCAL COUNCILS.

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INSTRUCTIONS.

1. Legislative Department of Government of India to be addressed.
2. Draft Bills to be ordinarily reported to Secretary of State and Government of India before introduction.
3. Previous sanction when to be applied for in certain cases.
4. Procedure after report of draft Bill to Secretary of State and Government of India.
5. Exceptions from foregoing rules.
6. Procedure in exceptional cases.
7. Amendments in Council.
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INSTRUCTIONS REGARDING LEGISLATION IN LOCAL 73
COUNCILS.

INSTRUCTIONS TO LOCAL GOVERNMENTS
REGARDING LEGISLATION IN LOCAL
COUNCILS.*

24 & 25 Vict.
c. 67.

I. (1) Every communication made by a Local Govern-
ment to the Government of India asking for leave to intro-
duce a Bill, or regarding a Bill which has been introduced,
in the local Council, or submitting a law for the as-
sent of the Governor General under section 40 of the
Indian Councils Act, 1861†, shall be addressed to the
Secretary to the Government of India in the Legislative
Department.

Legislative
Department
of Govern-
ment of India
to be address-
ed.

(2) Nothing in this rule shall be construed to apply to
any correspondence or communication regarding a proposal
for legislation in a local Council, unless and until the stage
is reached at which leave to introduce a Bill is asked for.
All correspondence before that stage shall be conducted
with the Executive Department of the Government of
India to which the subject belongs.

Where the legislation proposed involves substantial questions of princi-
ple, leave to introduce a Bill should not be asked for under this rule until
such questions have been settled in communication with the Executive
Department of the Government of India to which the subject belongs.

2. (1) Save as otherwise provided in these rules, every
draft Bill, with all necessary papers connected therewith,
shall, before introduction, be transmitted with a despatch
to the Secretary of State.

Draft Bills
to be ordinari-
ly reported
to Secretary
of State and
Government
of India be-
fore introduc-
tion.

(2) In the case of a Madras or Bombay draft Bill, the
despatch shall be addressed by the Local Government to
the Secretary of State direct, a copy thereof and of its
enclosures being forwarded for information with a covering
letter to the Legislative Department of the Government of
India.

The usual number of spare copies of the draft Bill and the connected
papers should accompany the despatch to the Secretary of State, and
twenty-four spare copies should accompany the letter to the Legislative
Department of the Government of India.

(3) In the case of a draft Bill other than a Madras or
Bombay draft, the Local Government shall forward the
draft, with all necessary papers connected therewith, to the
Legislative Department of the Government of India, and
the requisite despatch shall forthwith be addressed by the
Government of India to the Secretary of State, a copy
thereof being forwarded for information to the Local Gov-
ernment.

Twenty-five spare copies of the draft Bill and the connected papers

* For the explanatory despatch with which these *Instructions* were
forwarded to the Secretary of State, see App. IV, *post*, pp. 113-114. For
the letters with which they were issued to Local Governments, see App.
V, *post*, pp. 115-118.

† See *ante*, p. 18.

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should accompany the communication to the Legislative Department of the Government of India, twenty-two being required for the Government of India and three for the Secretary of State.

It is not intended that the issue of the despatch here provided for should be delayed by the Legislative Department to admit of the examination of the draft Bill by the Government of India, but that such examination should be proceeded with after the issue of the despatch and during the two months' interval provided for by rule 4, *post*.

Previous sanction when to be applied for in certain cases.

3. (1) Where a draft Bill contains penal clauses, the previous sanction of the Government of India thereto shall be expressly applied for when the draft is reported to the Legislative Department of the Government of India under sub-section (2) or sub-section (3) of rule 2, as the case may be.

See note to section 43 (4) of the Indian Councils Act, 1861, *ante*, p. 20, and Secretary of State's despatch No 35, dated the 1st December, 1862, App. I, *post*, p. 97.

(2) Where a draft Bill contains provisions which, under section 43 of the Indian Councils Act, 1861*, or section 5 of the Indian Councils Act, 1892†, require the previous sanction of the Governor General, such previous sanction shall likewise be expressly applied for when the draft is forwarded to the Legislative Department of the Government of India as aforesaid.

Procedure after report of draft Bill to Secretary of State and Government of India.

4. When a draft Bill has been reported to the Secretary of State and the Government of India under rule 2, it shall not be introduced in the local Council until the receipt of a communication from the Legislative Department of the Government of India intimating that the penal or other clauses (if any) requiring previous sanction are sanctioned, and that the Secretary of State and the Government of India have no present intention of interfering with the measure :

Although the Governments of Madras and Bombay address the Secretary of State direct, the replies of the Secretary of State are, "to obviate all chance of concurrent or conflicting action," by arrangement addressed to the Government of India for communication to the Local Government concerned. See paragraph 3 of Secretary of State's Despatch No 33 (Legislative), dated the 15th October, 1874.

Provided that, if no such communication and no orders to the contrary are received within two months from the date of the despatch transmitting the draft Bill to the Secretary of State, and if such previous sanction (if any) as is referred to in rule 3, sub-section (2), has been obtained, the Bill may be introduced and proceeded with on the assumption that the penal clauses (if any) are approved and that there is no present intention, on the part of either the Secretary of State or the Government of India, of objecting to the measure :

The previous sanction referred to in rule 3, sub-section (2), is required by Act of Parliament and cannot, therefore, be dispensed with. With the penal clauses it is different—see *ante*, p. 20, and *post*, p. 98n.

Provided, also, that the omission of either the Secretary of State or the Government of India to

* See *ante*, page 20.

† See *ante*, page 38.

communicate any remarks regarding a measure dealt with under this and the foregoing rules shall not be taken to imply final approval of the measure, and shall not be regarded as in any way affecting the right of the Governor General to withhold his assent therefrom under section 40, or that of Her Majesty to signify Her disallowance thereof under section 41, of the Indian Councils Act, 1861.*

24 & 25 Vict.,
c. 67.

The examination by the Legislative Department of the Government of India of the Bills of a local Council does not ordinarily extend to matters of form and details of drafting. For these the Local Government is held responsible.

5. (1) The following shall be excepted from the operation of rules 2, 3 and 4, namely :—

Exceptions
from fore-
going rules.

- (a) draft Consolidation Bills, pure and simple, consolidating Acts of the local Council concerned ;
- (b) cases in which the approval of the Secretary of State and the Government of India to the principle of the legislation proposed has already been obtained and a further reference is, in the opinion of the Local Government, unnecessary ;
- (c) cases in which the legislation proposed is, in the opinion of the Local Government, of a purely formal or unimportant character ; and
- (d) cases in which the legislation proposed cannot, in the opinion of the Local Government, be, without serious evil, delayed in order to admit of a prior report to the Secretary of State and the Government of India.

(2) In every such case as aforesaid, the draft Bill may be introduced forthwith :

Provided that, where such a draft Bill contains penal clauses, the Legislative Department of the Government of India shall be applied to for sanction thereto, and the Bill shall not be introduced until the receipt of such sanction or the expiration of one month from the date of the application thereof without the receipt of any reply from the Legislative Department of the Government of India :

24 & 25 Vict.,
c. 67.
55 & 56 Vict.,
c. 14.

Provided, also, that, where such a draft Bill contains provisions which, under section 43 of the Indian Councils Act, 1861†, or section 5 of the Indian Councils Act, 1892‡, require the previous sanction of the Governor General, such previous sanction shall be applied for to, and obtained from, the Legislative Department of the Government of India before the introduction of the Bill.

See the note to the first proviso to rule 4, *ante*.

6. (1) Where a draft Bill is dealt with under rule 5 and introduced without a prior report to the Secretary of State and the Government of India, a copy of it and of all necessary papers connected therewith shall forthwith be transmitted to the Secretary of State with a full explanatory despatch.

Procedure
in exceptional
cases.

(2) The instructions contained in sub-sections (2) and (3) of rule 2 shall apply, *mutatis mutandis*, in the case of every despatch issued under sub-section (1) of this rule.

* See *ante*, pp. 18 and 19.

† See *ante*, p. 20.

‡ See *ante*, p. 38.

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(3) Where a draft Bill is dealt with under rule 5, no reply to the explanatory despatch referred to in sub-section (1) of this rule need be awaited before the Bill is further proceeded with.

Amendments
in Council.

7. (1) Where, after a Bill has been introduced in a local Council, whether as an exceptional measure dealt with under rule 5 or otherwise, an amendment is proposed in it which the Local Government is prepared to accept, but which, owing to its being outside the principle of the Bill as introduced or for any other reason, it considers that it cannot accept without a reference to the Government of India, the requisite steps should be taken to delay the progress of the Bill through Council pending the result of a reference to the Legislative Department of the Government of India.

(2) Where a reference is made to the Legislative Department of the Government of India under this rule, the amendment so referred should not be accepted until the receipt of a favourable reply, or until the expiration of one month from the date of the reference without the receipt of any such reply.

(3) Where a reference is made under this rule, and the Government of India consider that the amendment so referred is one which ought not to be accepted without a further reference to the Secretary of State, an intimation to that effect will be sent to the Local Government by the Legislative Department of the Government of India. The Secretary of State shall then be addressed by the Government of India, and the amendment shall not be accepted until intimation of the arrival of a favourable reply from the Secretary of State is received by the Local Government from the Legislative Department of the Government of India, or until the expiration of two months from the date of the reference made by the Local Government without the receipt of any further communication on the subject from the Legislative Department of the Government of India.

(4) Where in the course of a Bill through Council an amendment is proposed which requires any such previous sanction as is referred to in rule 3, such previous sanction shall be applied for to, and obtained from, the Legislative Department of the Government of India before the Bill so amended is passed.

Marginal
references
to clauses.

8. In every draft Bill a reference shall be added on the margin of each clause to show whether it is based on any, and, if so, on what, provision of the existing law. Such marginal references may be retained during the progress of the Bill through the local Council, but shall be removed from the copy submitted, in the event of the passing of the measure, for the assent of the Governor or Lieutenant-Governor, as the case may be, and also from that submitted to the Legislative Department of the Government of India for the assent of the Governor General.

RULES OF LEGISLATIVE BUSINESS MADE
UNDER SECTION 18 OF THE INDIAN
COUNCILS ACT, 1861.

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RULES OF LEGISLATIVE BUSINESS MADE UNDER SECTION 18 OF THE INDIAN COUNCILS ACT, 1861.*

[4TH FEBRUARY, 1897.]

The following Rules for the Conduct of the Legislative Business of the Council of the Governor General were made by the Council of the Governor General assembled for the purpose of making Laws and Regulations at the meeting held on the fourth day of February, 1897, and received the assent of His Excellency the Governor General on the same day.†

RULES OF LEGISLATIVE BUSINESS.

Part I.—Preliminary.

1. These Rules supersede the Rules for the Conduct of Business at the meetings of the Council made on the 11th day of February, 1873, and the 16th day of February, 1883. ^{Supersession of former rules.}

2. In these Rules—

“Council” means the Council of the Governor General of India assembled for the purpose of making Laws and Regulations: ^{Definitions.}

“President” means the Governor General or (during the time of his visit to any part of India unaccompanied by his Council) the President nominated by the Governor General in Council, under the Indian Councils Act, 1861, section 6†; or, in the absence of both the Governor General and the President so nominated, the senior Ordinary Member of Council present and presiding:

“Member” means a Member of the Council, whether ordinary, extraordinary or additional:

“Secretary” means the Secretary to the Government of India in the Legislative Department, and includes the Deputy Secretary and every person for the time being exercising the functions of the Secretary: and

“Local Government” includes a Chief Commissioner.

As to Secretaries to the Government of India, see the Secretaries to Government Act, 1834 (11 of 1834), rule 40 of the *Rules of Executive Business*, ante, p. 62, and No. 21 of the *Secretariat Instructions*, ante, p. 70.

As to the meaning of the expression “Local Government,” cf. s. 3 (29) of the General Clauses Act, 1857 (X of 1857), and foot-note to rule 8 of the *Rules of Executive Business*, ante, p. 52.

Part II.—Meetings of the Council.

3. The Council shall ordinarily meet at 11 A.M. and Hours of sitting shall not prolong its sitting after 4 P.M., unless the President otherwise directs.

* See ante, p. 10.

† See Notification No. 3, dated the 5th February, 1879, Gazette of India, 1897, Pt. I, p. 97.

‡ See ante, p. 7.

Quorum. 4 The quorum shall be seven, including the President.

See s. 15 of the Indian Councils Act, 1861, *ante*, p. 10.

Members' places. 5. The Governor or Lieutenant-Governor and the Law Member shall sit where the President may direct.

Subject to any such direction, the Members shall sit in the following order, beginning from the right of the President :—

- (1) The Commander-in-Chief.
- (2) The Ordinary Members according to seniority.
- (3) The Additional Members according to seniority.

The practice is for the Lieutenant-Governor—the Governor General's Council has never assembled except in Calcutta and at Simla—to sit either immediately on the right of, or directly opposite to, the President ; and for the Law Member to sit on his immediate left. The Secretary to the Council always sits next to the Law Member.

Adjournments. 6. The President may adjourn, without any discussion or vote, any meeting or business, whether there be a quorum present or not, to any future day, or to any hour of the same day.

Points of order. 7. The President shall preserve order, and all points of order shall be decided by him, no discussion thereupon being allowed.

Members to speak sitting. 8. A Member desiring to make any observations on any subject before the Council shall address the President without rising from his chair.

Order of speeches. 9 On all matters brought before the Council, after the Member who makes a motion has spoken, each Member consecutively, beginning with the Member on the left of the President, may make such observations as he thinks proper. The Law Member, however, may speak according to the position of the seat he would occupy if he sat in order of seniority and not according to the seat he may occupy at the Council table under rule 5.

After all the Members in turn have had an opportunity of speaking, the Mover may speak once by way of reply, and any other Member may, with the permission of the President speak once by way of explanation :

Provided that, if the matter be an amendment of a Bill, the Member in charge of the Bill shall be entitled to speak next after the Mover of the amendment.

Explanations. 10. When, for the purpose of explanation during discussion, or for any other sufficient reason, any Member has occasion to ask a question of another Member on any measure then under the consideration of the Council, he shall ask the question through the President.

Members who cannot speak English. 11. Any Member may speak at the request and on behalf of another Member who is unable to express himself in English.

12. On every motion before the Council the question shall be put by the President, and shall be decided by a majority of votes. Voting.

In case of a division, the votes shall be taken by the Secretary in consecutive order, beginning with the Member on the left of the President.

After the question is put, no further discussion upon it shall be allowed.

The President has a casting vote—see s. 15 of the Indian Councils Act, 1861, *ante*, p. 10.

13. Any Member may ask for any papers or returns connected with any Bill before the Council. The President shall determine, either at the time or at the meeting of the Council next following, whether the papers or returns asked for can be given. Papers and returns.

14. Communications on matters connected with any Bill before the Council may be addressed, either in the form of a petition to the Governor General in Council, or in a letter to the Secretary, and must in either case be sent to the Secretary. Ordinarily, such communications will not be answered. Communications to pending Bills

Except in the case of the High Court at Fort William, such communications shall ordinarily be sent through the Local Government.

15. The Secretary shall either cause such communications to be printed and send a copy to each Member, or circulate them for the perusal of each Member. Circulation of communications.

Part III.—Introduction and Publication of Bills.

16. Any Member desiring to move for leave to introduce a Bill in accordance with the provisions of section 19 of the Indian Councils Act, 1861,* shall give the Secretary at least three days' previous notice of the title and object of the Bill. Notice of motion for leave.

24 & 25 Vict.,
c. 67.

If such motion be carried, the Bill with a full Statement of Objects and Reasons shall, if not already prepared, be prepared by the Member or (if he so desire) by the Secretary in consultation with the Member.

As to Statements of Objects and Reasons, see Macaulay's Indian Minutes, No. 1, at pp. 4—5.

In practice the rule requiring at least three days' previous notice has to be observed only in the case of Bills proposed by non-official Additional Members.

It will be seen that a formal motion for leave to introduce a Bill has to be made, and that this may be done before the measure contemplated by the Mover has taken the shape of a Bill and is ready for introduction. This is recognized by rule 25 of the *Rules of Executive Business*, *ante*, p. 58; but in practice a Bill is always introduced and laid on the table as soon as the motion for leave to introduce it has been granted.

17. The Secretary shall then cause the Bill, together with the Statement of Objects and Reasons, to be printed, and shall send a copy to each Member. Printing of Bills.

* See *ante*, p. 11.

If any of the Members are unacquainted with English, he shall also, if requested, cause the Bill and the Statement of Objects and Reasons to be translated into Hindustani for their use.

Publication of Bills. 18. The Council may, at any time after leave to introduce a Bill has been granted, direct that the Bill be published in such manner as the Council thinks fit.

When the motion for leave to introduce a Bill is carried, the mover usually brings forward the further motion that the Bill be published in certain Gazettes.

Introduction of Bills. 19. When a Bill is introduced, or on some subsequent occasion, the Member in charge of it shall make one or more of the following motions :—

- (a) that it be referred to a Select Committee, or
- (b) that it be taken into consideration by the Council, either at once or at some future day to be then mentioned, or
- (c) that it be circulated for the purpose of eliciting opinion thereon.

The practice is—see note to rule 16, *ante*—to introduce a Bill on the same day on which leave for its introduction is granted, and to make one of the motions indicated in this rule “on some subsequent occasion.”

Preliminary circulation of Bills. 20. No such motion shall be made until after a copy of the Bill and a copy of the Statement of Objects and Reasons have been furnished to each Member. Any Member may object to the motion unless such copies have been furnished to him at least seven days previously : and such objection shall prevail unless the President, in exercise of his power to suspend any of these rules, allows the motion to be made.

Discussion of Bills. 21. On the day on which such motion is made, or on any subsequent day to which the discussion is postponed, the principle of the Bill and its general provisions may be discussed.

Gazetting. 22. When any motion mentioned in rule 19 is carried, the Bill shall, together with a Statement of its Objects and Reasons, if not already published on a motion under rule 18, be published in English in the Gazette of India.

23. The Bill and Statement shall also, if publication has not already been directed, be published in such official Gazettes and in such vernacular languages (if any) as the Council in each case decides to be necessary for the purpose of giving notice to the communities affected by the Bill.

For this purpose, the Council shall make an order at the meeting at which such motion is carried, and may from time to time, on the motion of any Member, vary or cancel such order.

23. The Governor General, if he see fit, may order the publication of a Bill, together with the Statement of Objects and Reasons which accompanies it, in such Gazettes and languages as he thinks necessary, although no motion has been made for leave to introduce the Bill. Further publication by order.

In that case it shall not be necessary to move for leave to introduce the Bill; and, if the Bill be afterwards introduced, it shall not be necessary to publish it again.

A Statement is kept of Bills published by order of the Governor General under this rule—see App. VII, No. 20, Pt. III, *post*, p. 136.

Part IV.—Select Committees.

24. The Law Member shall be a Member of every Select Committee. Composition of Select Committees.

The other Members of every Committee shall be named by the Council when the Bill is referred, or at any subsequent Meeting.

The Law Member, or, in his absence, the Member in charge of the Bill, shall be chairman of the Committee, and, in the case of an equality of votes, the chairman shall have a second or casting vote.

25. After publication of a Bill in the Gazette of India, the Select Committee to which the Bill may have been referred shall make a report thereon. Report of Select Committees.

Such report shall be made not sooner than three months from the date of the first publication in the Gazette of India, unless the Council orders the report to be made sooner.

Reports may be either preliminary or final.

The Select Committee shall in their report state whether or not, in their judgment, the Bill has been so altered as to require re-publication, whether the publication ordered by these Rules or by the Council has taken place, and the date on which the publication has taken place, or, where publication in more than one Gazette or in more than one language is ordered, the date on which the publication in each such Gazette and each such language has taken place.

If in the judgment of the Committee, the Bill has been so altered as to require re-publication, the Secretary shall send a copy of the altered Bill to the Secretary of the Department to which it pertains.

When the Committee recommend the re-publication of a Bill which was originally ordered by these Rules or by the Council to be published in more than one Gazette or in more than one language, they shall, in the absence of anything to the contrary in their report, be taken to recommend that the Bill be republished in every such Gazette and every such language.

If the Committee are of opinion that it is unnecessary to re-publish the Bill in any such Gazette or in any such language, they shall, in their report, state the grounds of their opinion.

It is usual, on the reference of a Bill to a Select Committee, to take it for granted that the principle of the Bill is accepted and that merely the question of details has to be settled. See speech made by Sir G. Evans in Council on the 4th January, 1896, in connection with the Bill which eventually became the Legal Practitioners Act, 1896 (XI of 1896).

Where after the reference of a Bill to a Select Committee the Government of India desire to extend its scope, the practice is for the Executive Department to issue a further Office Memorandum to the Legislative Department, such Office Memorandum to be made a Paper to the Bill and laid before the Select Committee.

In the case of the Excise Act, 1896 (XII of 1896), the Select Committee prepared a consolidating Bill and proposed its substitution for the Amending Bill committed to it. See Legislative Department's A. Proc., March, 1896, Nos. 321-347.

For form of Report of Select Committee, see App. VII, No. 16, *post*, pp 128-129.

Printing and publication of reports.

26. The Secretary shall cause every report of a Select Committee to be printed, and shall send a copy of such report to each Member, and shall cause the report, with the amended Bill to be published in the Gazette of India.

If any Member present is unacquainted with English, the Secretary shall also, if requested, cause the report to be translated into Hindustani for his use.

Presentation of reports.

27. The report of the Select Committee on a Bill shall be presented to the Council by the Member in charge of the Bill, and shall be taken into consideration by the Council as soon as conveniently may be; but any Member may object to its being so taken into consideration when he has not been furnished for a week with a copy of the report; and such objection shall prevail, unless the President, in exercise of his power to suspend any of these Rules, allows the report to be taken into consideration.

Part V.—Consideration and Amendment of Bills.

Proposal of amendments.

28. When a Bill is taken into consideration by the Council, any Member may propose an amendment of such Bill.

Notice of amendments.

29. If notice of such amendment has not been sent to the Secretary at least three days before the meeting of the Council at which the Bill is to be considered, any Member may object to the moving of the amendment; and such objection shall prevail, unless the President, in exercise of his power to suspend any of these Rules, allows the amendment to be moved.

The Secretary shall, if time permits, cause every notice of amendment to be printed, and send a copy for the information of each Member.

If any Member present is unacquainted with English, the Secretary shall also, if requested, cause every such notice to be translated into Hindustani for his use.

30. Amendments shall ordinarily be considered in the order of the clauses to which they respectively relate. Order of amendments.

31. Notwithstanding anything in the foregoing Rules, it shall be in the discretion of the President, when a motion that a Bill be taken into consideration has been carried, to submit the Bill or any part of the Bill to the Council section by section. When this procedure is adopted, the President shall call each section separately, and, when the amendments relating to it have been dealt with, shall put the question "that this section, or (as the case may be) this section, as amended, stand part of the Bill." Submission of Bills section by section.

It is more correct to speak of the "clauses" of a Bill and the "sections" of an Act.

32. Any Member may move that a Bill which has been amended by the Council or by a Select Committee be republished or re-committed, and, if the Council so decide, the President may order the Bill to be republished or re-committed, as the case may be. Re-publication of re-committal of amended Bills.

33. If no amendment be made when a Bill is taken into consideration by the Council, the Bill may at once be passed. Passing of Bills.

If any amendment be made, any Member may object to the passing of the Bill at the same meeting; and such objection shall prevail, unless the President, in exercise of his power to suspend any of these Rules, allows the Bill to pass.

Where the objection prevails, the Bill shall be brought forward again at a future meeting, and may then be passed with or without further amendment.

Part VI.—Passing of Bills and Publication of Acts.

34. When the Council, a copy thereof shall be signed by the President, and, when the Governor General has declared his assent thereto, such copy shall be signed by the Governor General, and the Bill shall be published as soon as possible in the official Gazettes, under the signature of the Secretary, as an Act of the Governor General in Council. Authentication and publication of Acts.

Such publication shall be made in the Gazette of India in English and in the official Gazettes of the Local Governments in English and in such vernacular languages spoken in the territories subject to such Governments respectively as may be ordered by the Council or directed by the Local Government:

Provided that, when the Act does not apply to the whole of British India, it shall be published only in the Gazette of India and in the Gazettes of the Local Governments to whose territories it applies.

For form of recording the passing of a Bill and the assent of the Governor General thereto, see App. VII, No. 11, *post*, p. 126.

Publication in English in the Gazette of India and in some or all of the local official Gazettes is obligatory. The question of translation into the vernacular is left to the discretion of the Local Governments concerned, unless the Council issues express orders on the subject.

Local Governments are required to furnish to the Legislative Department six-monthly statements, regarding the publication and translation of Acts. In the form given in App. VII, No. 19, *post*, p. 132.

As to the issue of translations and transliterations of Acts, see Legislative Department's A. Pros., July, 1896, Nos 1—8.

Part VII.—Duties of Secretary.

Lists of
business.

35. At least two days before each meeting of the Council, the Secretary shall send to each Member a list of the business to be brought forward at such meeting.

Subject to the provisions of rule 29*, no business shall be entered by the Secretary in a list, unless notice thereof has been given to him at least three days before the meeting of the Council to which the lists relate :

Provided that business may be added to the list at any time before a meeting under the special orders of the President.

The practice is to circulate, about a week before each meeting of Council, a rough list and to invite the suggestions of the Members thereon. In accordance, as far as possible, with such suggestions as are received within a specified time, the list is revised and submitted to the Governor General for approval on the third day preceding the date fixed for the meeting. On the Governor General's orders the final list is then prepared and notified to all the Members attending during the current session.

Journal.

36. The Secretary shall keep a journal, in which all the proceedings of the Council shall be fairly entered.

The journal shall be submitted after each meeting to the President for his confirmation and signature, and, when so signed, shall be the record of the proceedings of the Council.

For form of "journal," see the example reproduced in App. VII, No. 17, *post*, p. 130.

Reports of
proceedings.

37. The Secretary shall also cause to be prepared a full report of the proceedings of the Council at each of its meetings, and publish it in the Gazette of India as soon as practicable. He shall send a copy of such report to each Member and also to the Permanent Under-Secretary of State for India.

For form of full report, see the example reproduced in App. VII, No. 18, *post*, pp. 131-132.

Other duties
of Secretary.

38. In addition to the other duties specially required by these Rules, it shall be the duty of the Secretary—

First, to draft all Bills originated by the Government of India, the Statements of their Objects and Reasons and the Reports of the Select Committee to which such Bills are referred ;

* See *ante*, p. 84.

Second, to take charge of the copies of the Bills signed by the Governor General and of all the other records of the Council ;

Third, to keep the books of the Council ;

Fourth, to keep a list of the business for the time being before the Council ;

Fifth, to superintend the printing of all papers printed in pursuance of these Rules ;

Sixth, to assist the Council and all Committees in such manner as they may direct ;

Seventh, to send to the Secretary of the Department to which the Bill pertains any Bill which an Additional Member has obtained leave to introduce under rule 16* ;

Eighth, to examine all Bills deposited by Additional Members, and report to the President on those which contain clauses trenching on subjects coming within section 19 or section 22 of the Indian Councils Act, 1861† ;

Ninth, to write all letters which the Council or the President, or any Select Committee, or the Law Member directs to be written.

24 & 25 Vict.,
c 67.

For the form in which the list of pending business is kept, see App. VII, No 20, *post*, pp. 133-138

The list is revised and re issued after each meeting of the Legislative Council, copies being supplied to all the Members. A Statement, showing what Bill have been prepared in the Legislative Department unofficially and are still under the consideration of the Executive Government, has lately been added, for the information of the Ordinary Members only.

39. It shall be the duty of the Secretary to cause to be **Translations.** translated into Hindustani Bills, Statements of Objects and Reasons, Reports of Select Committees and Amendments of Bills, ~~to cause papers to be explained to Members unacquainted with English, and otherwise to assist them in such manner as they may require.~~

Part VIII.—Miscellaneous.

40 Strangers may be admitted into the Council **Admission of**
Chamber during the sittings of the Council on the order **strangers.**
of the President.

Application for orders of admission is to be made to the Secretary.

41. The President, on the motion of any Member, may **Withdrawal**
direct at any time during a sitting of the Council that **of strangers.**
strangers withdraw.

* See *ante*, p. 81.

† See *ante*, pp. 11 and 12-13.

Publication and sale of papers. 42. Any paper relating to any measure before the Council may be published by order of the President.

Copies of papers so published shall be sold at such rates as may be fixed by the Secretary.

Dropped Bills. 43. Any Bill respecting which no motion has been made in the Council for two years may, by order of the President, be removed from the List of Business.

Suspension of Rules. 44. The President, for sufficient reason, may suspend any of the foregoing rules.

REGULATIONS FOR THE NOMINATION OF
ADDITIONAL MEMBERS OF THE GOV
ERNOR GENERAL'S COUNCIL.

CONTENTS,

REGULATIONS.

- I.—Number of officials.
- II.—Elected Members.
- III.—Nominated Members.
- IV.—Vacancies among elected Members.
- V.—Recommendations how made.
- VI.—Residence.
- VII.—Failure to elect.
- VIII.—Fresh request.
- IX.—Temporary provision.

REGULATIONS FOR THE NOMINATION OF ADDITIONAL MEMBERS OF THE GOV- ERNOR GENERAL'S COUNCIL MADE UNDER SECTION I (4) OF THE INDIAN COUNCILS ACT, 1892.*

[23RD JUNE, 1893.]

IN exercise of the power conferred by section 1, sub-
section (4), of the Indian Councils Act, 1892 (55 & 56
Vict., cap. 14),* the Governor General in Council has, with
the approval of the Secretary of State for India in Council,
made the following Regulations for the nomination of
Additional Members of the Council of the Governor Gen-
eral of India.†

REGULATIONS FOR NOMINATION OF ADDITIONAL MEMBERS OF COUNCIL.

I.—Of the persons to be nominated Additional Mem- Number of
bers of Council by the Governor General for his assistance officials.
in making Laws and Regulations not more than six shall
be officials.

II.—The nominations to five seats shall be made by Elected Mem-
the Governor General on the recommendation of the follow- bers.
ing bodies respectively, namely :—

A.—The non-official Additional Members of the Coun-
cil of the Governor of the Presidency of Fort St.
George.

B.—The non-official Additional Members of the Coun-
cil of the Governor of the Presidency of Bombay.

C.—The non-official Members of the Council of the
Lieutenant-Governor of the Bengal Division of
the Presidency of Fort William in Bengal.

D.—The non-official Members of the Council of the
Lieutenant-Governor of the North-Western Prov-
inces and Oudh.

E.—The Calcutta Chamber of Commerce.

It will be seen that no provision has as yet been made for the represent-
ation of the recently established Councils of the Lieutenant-Governors of
the Punjab and Burma.

For form of notification appointing an Additional Member recommend-
ed under this rule, see App. VII, No. 8, *post*, p. 124.

* See *ante*, p. 36.

† See Notification No. 19, dated the 23rd June, 1893, Gazette of India,
1893, Pt. I, p. 345; also Lord Lansdowne's explanatory speech in Council
on the 16th March, 1893.

Nominated
Members.

III.—The Governor General may, at his discretion, nominate persons to such of the remaining seats as shall not be filled by officials in such manner as shall appear to him most suitable with reference to the legislative business to be brought before the Council and the due representation of the different classes of the community.

The practice is to nominate under this rule persons representing the Central Provinces, the Punjab and, occasionally, Burma or Assam.

Vacancies
among elect-
ed Members.

IV.—When a vacancy occurs, and is to be filled under Rule II of these Regulations, the Governor General shall cause the proper body to be requested to recommend a person for nomination by the Governor General.

Recommend-
ation how
made.

V.—The recommendation shall be made—

(a) in the case of the non-official Additional Members or non-official Members of a Local Council, by a majority of votes of such members;

(b) in the case of the Calcutta Chamber of Commerce, in the manner laid down in the rules of the Chamber for carrying Resolutions or recording decisions upon questions of business brought before it.

An absolute majority of the Members entitled to vote is essential—see letter to the Government of Bombay, No. 523, dated the 13th March, 1895, Legislative Department's Pros., May, 1905, Nos 80-93.

It is not apparently necessary that the voting should be at a meeting of the Members entitled to vote; the votes may be sent by letter. But votes sent by letter cannot be added to votes taken at a meeting—see Keep-with to the above-mentioned Pros.

Residence.

VI.—It shall be a condition in the case of any person to be recommended by the non-official Additional Members or non-official Members of a Local Council that he shall be a person ordinarily resident within the province for which such Council is appointed.

As to the meaning of the expression "ordinarily resident," see Legislative Department's Unofficial Reference No. 582 of 1893.

Failure to
elect.

VII.—If within two months after receiving the request of the Governor General as provided by Rule IV the body fails to make a recommendation, the Governor General may nominate at his discretion a person belonging to the province or class which the body is deemed to represent.

Fresh
request.

VIII.—If the Governor General shall decline to nominate any person who has been under these Regulations recommended for nomination, a fresh request shall be issued as provided in Rule IV, and the procedure laid down in Rules V and VII shall apply.

IX.—[*Temporary provision omitted as being spent.*]

RULES FOR THE DISCUSSION OF THE
ANNUAL FINANCIAL STATEMENT AND
THE ASKING OF QUESTIONS IN COUN-
CIL.

CONTENTS.

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RULES.

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*Part II.—Rules for the Discussion of the Annual
Financial Statement of the Governor General in
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2. Financial Statement to be made.

3. Discussion.

4. Reply.

*Part III.—Rules for the Asking of Questions in
Council.*

5. Questions.

6. Notice of questions.

7. Form of questions.

8. Disallowance.

9. Extension or restriction of time.

10. Order.

11. Questions how to be put and answered.

12. Answer to question not put.

13. No debate.

14. Entry in Proceedings.

RULES FOR THE DISCUSSION OF THE ANNUAL FINANCIAL STATEMENT AND THE ASKING OF QUESTION IN COUNCIL MADE UNDER SECTION 2 OF THE INDIAN COUNCILS ACT, 1892.*

[2ND FEBRUARY, 1893.]

In exercise of the power conferred by section 2 of the Statute 55 & 56 Vict., cap. 14 (the Indian Councils Act, 1892), the following Rules have been made by the Governor General of India in Council authorizing at any meeting of the Governor General's Council for the purpose of making Laws and Regulations the discussion of the Annual Financial Statement of the Governor General in Council and the asking of questions; the Rules have received the sanction of the Secretary of State for India in Council, and are now published for general information†:—

RULES.

Part I.—Preliminary.

1 In these Rules—

Definitions.

“Council” means the Council of the Governor General of India for the purpose of making Laws and Regulations:

“President” means the Governor General or (during the time of his visit to any part of India unaccompanied by his Council) the President nominated by the Governor General in Council under the Indian Councils Act, 1861, section 6†; or, in the absence of both the Governor General and the President so nominated, the senior Ordinary Member of Council present:

“Member” means a Member of the Council, whether ordinary, extraordinary or additional.

Part II.—Rules for the Discussion of the Annual Financial Statement of the Governor General in Council.

2. The Financial Statement shall be explained in Council every year, and a printed copy given to each Member. Financial Statement to be made.

The practice is to distribute these copies as soon as the Council has met, but not before.

3. After the explanation has been made each Member shall be at liberty to offer any observations he may wish to make on the Statement. Discussion.

4. The Financial Member shall have the right of reply, and the discussion shall be closed by the President making such observations, if any, as he may consider necessary. Reply.

* See *ante*, p. 36.

† See Notification No. 9, dated the 2nd February, 1893, Gazette of India, 1893, Pt. I, p. 53; also Lord Lansdowne's explanatory speech in Council on the same date.

‡ See *ante*, p. 7.

Part III.—Rules for the Asking of Questions in Council.

Questions. 5. Any question may be asked by any Member, subject to the following conditions and restrictions.

Notice of questions. 6. A Member, who wishes to ask a question, shall give at least six clear days' notice in writing to the Secretary to the Government of India in the Legislative Department, submitting in full the question which he wishes to ask.

The practice is for the Legislative Department to express an opinion as to whether or not the question is in conformity with rule 7, *post*, and then to send it to the Executive Department concerned, where it is decided, under the orders of the Governor-General, whether it is to be admitted or not, and, if admitted, how it is to be replied to, the draft reply being sent to the Legislative Department.

Form of questions. 7. Questions must be so framed as to be merely requests for information, and must not be in an argumentative or hypothetical form or defamatory of any person or section of the community.

For a case in which a question was disallowed as being argumentative, see Legislative Department's B. Pros., April, 1897, Nos. 97-107. For a case in which the questions proposed were modified before the Government of India consented to admit them, see Legislative Department's B. Pros., February, 1895, Nos. 152-157. See, too, Legislative Department's B. Pros., April, 1895, Nos. 155-162.

Disallowance. 8. The President may disallow any question without giving any reason therefor other than that in his opinion it cannot be answered consistently with the public interests; and in such case the question shall not be entered in the Proceedings of the Council.

Extension or restriction of time. 9. The President may, if he thinks fit allow a question to be asked with shorter notice than six days, and may in any case require longer notice if he thinks fit, or extend, if necessary, the time for answering the question.

Order. 10. When the President has permitted a question to be asked, it shall be entered in the Notice Paper for the day, and questions shall be put in the order in which they stand in the Notice Paper before any other business is entered upon at the meeting.

Questions how to be put and answered. 11. A question shall be read by the Member by whom it was framed, or in his absence, if he so desires, by some other Member in his behalf, and the answer shall be given by the Member in charge of the Department concerned or by some other Member whom the President may designate for the purpose.

When the Member, in whose name a question stands, is unacquainted with English, the question has, with the permission of the President, been read by another Member instead.

Answer to question not put. 12. The President may also rule, at his discretion, that an answer to a question on the Notice Paper, even though the question be not put, shall be given on the ground of public interest.

No debate. 13. No discussion shall be permitted in respect of an answer given to a question asked under these Rules.

Entry in Proceedings. 14. The question asked and the answer given to it shall be entered in the Proceedings of the Council.

DESPATCH TO THE GOVERNMENT OF INDIA, NO. 35 OF
1862.

FROM

THE RIGHT HON'BLE SIR CHARLES WOOD,
BART., G.C.B.*

Her Majesty's Secretary of State for India.

India Office, London., the 1st December, 1862.

MY LORD,

YOUR letters Nos. 16, 17 and 18, dated 5th September,

By the Council of the Governor of Madras—

1st.—"An Act to make better provision for the management of boats and catamarans in the Madras roads"

2nd.—"To prevent damage to the pier, to regulate the traffic and to provide for levying of tolls upon the same."

By the Council of the Governor of Bombay—

"An Act for the establishment and regulation of Reformatory schools for Juvenile offenders."

1862, having been considered by me in Council, I have to express my approval of Your Lordship having withheld, for the reasons stated in your minutes of the 25th July and the 13th August last, your assent to the Acts noted in the margin.

2. Cases no doubt will occasionally occur when special legislation by the Local Governments for offences not included in the Penal Code will be required. In these cases, the general rule should be to place such offences under penalties already assigned in the Code to acts of a similar character. This mode of legislation though an addition to, cannot be deemed an alteration of, the Penal Code; but if any deviation is considered necessary, then the law requires that your previous sanction should be obtained.

Local legislation constituting new offences.

3. It was the intention of Her Majesty's Government that, except in local and peculiar circumstances, the Code should contain the whole body of penal legislation, and that all additions or modifications suggested by experience should, from time to time, be incorporated in it, and the duty of maintaining this uniformity of course devolve upon Your Excellency in Council.

Indian Penal Code intended to be exhaustive.

Penal clauses
in local Councils' Bills to
be submitted
for previous
sanction of
Government
of India.

4 As a general rule for the guidance of the local Councils, it would probably be expedient—and this appears also to be your own view—that all Bills containing penal clauses should be submitted for your previous sanction.

With this letter should be read Sir Henry Maine's Minutes, Nos. 6 and 7, in which the question—what is meant by "altering in any way" the Penal Code—is discussed. Sir Henry Maine admitted that "it was difficult to contend that by constructive alterations one did not alter in *some* way the Penal Code," but he concluded in favour of the argument the other way, although that argument was derived entirely from the inconvenience—and, judged by its *consequences*, the unreasonableness—of the affirmative construction. Sir Henry Maine further pointed out that the Bills falling under each of the different heads (except the 4th) specified in section 43 of the Indian Councils Act, 1861, *ante*, p. 20—had a distinct common character. "But, if the 4th prohibition covers constructive alterations of the Code, the Bills to which it applies are altogether miscellaneous and include nearly all the measures which would naturally be brought before a Local Legislature."

In the result, it has always been understood that previous sanction to the penal clauses in a Bill of a Local Legislature is *not* required by the Statute of 1861; that it is required only as a matter of expediency in accordance with the views expressed in the despatch above; and that it is the previous sanction of the *Governor General in Council*, not that of the *Governor General* personally, that should be applied for and accorded in this connection. See Legislative Department's Register No. 1297 of 1898.

DESPATCH TO THE GOVERNMENT OF INDIA, NO. 14 OF
1861.

FROM

THE RIGHT HON'BLE SIR CHARLES WOOD,
BART., G.C.B.,*

Her Majesty's Secretary of State for India.

India Office, London, the 9th August, 1861.

MY LORD,

I HEREWITH transmit a copy of the Act† recently passed by Parliament to make better provision for the constitution of the Council of the Governor General of India, and other purposes, and in so doing I take the opportunity of acknowledging the receipt of the letters noted in the margin, and at the same time of expressing my obligations for the valuable assistance I have derived from the several communications which I have received from Your Lordship in Council, bearing on the important subjects for which provision is made by the Act.

2. In forwarding to Your Lordship in Council the Act which brings to a close the labours of the present Legislative Council of India, it is due to that body that I should place upon record the high sense I entertain of the important services it has rendered in the marked improvement which it has effected in the legislation of India. Since the year 1853, when the Council received its present constitution, it has had to deal with some of the most important questions which could have been submitted to the consideration of any legislative body. The projects of law laid before it have been carefully considered and ably discussed, and

Acknowledgments as to past legislation.

* Afterwards Viscount Halifax.

† The Indian Councils Act, 1861, see *ante*, pp. 3-24.

‡ See *Selection of Papers relating to the Constitution and Functions of the Indian Legislative Councils*, p. 39.

§ See *ibid*, p. 42.

¶ See *ibid*, p. 43.

the result of its labours has been to place on the Statute-book of India a series of sound and judicious measures which eminently establish its claim to the gratitude of the country and the thanks of Her Majesty's Government.

Principal
objects of
Statute of
1861.

3. The principal objects contemplated by the present Act are to impart greater efficiency to the Government of India and to the Governments of the Presidencies of Madras and Bombay in the discharge of their executive functions; to prescribe the mode in which the power of making laws and regulations is henceforth to be exercised by the Council of the Governor General; to restore to the Councils of the subordinate Presidencies, at the same time that they are strengthened for the purpose, the power of legislation; to authorize the Governor General in Council acting under the sanction of the Home Government, to confer upon Lieutenant-Governors of Provinces the power of making laws and regulations (with the aid of persons specially summoned for that purpose) for the Provinces which they respectively govern; and to provide for the temporary government of India in the event of a vacancy in the office of Governor General. To the most important provisions of the Act bearing on these several matters, I propose to refer more particularly in the sequel of this Despatch.

Section 2.
Constitution
of Executive
Council;
appointment
to it of
Barrister.

4. An important alteration has been made in the constitution of the Executive Council of the Governor General by the adoption of Your Lordship's recommendation that power should be obtained from Parliament for the appointment by the Crown of two members (instead of one), one of whom shall be a Barrister. Steps will be immediately taken for filling up the appointment thus created by the Act.

Section 4.
Five years'
tenure of
appointment
of Ordinary
Member.

5. By the fourth section of the present Act ordinary Members of the Council continue to be ordinary Members of Council under the Act. It is not my intention to deviate from the usual practice respecting the time for which a seat in Council has been held; and with respect to the Members of the Council who will continue to hold their seats under the present Act, the term of five years will be reckoned from the time when they respectively first took their seats in Council. The question of the salaries of future Members of Council will be considered by me in Council, and the result communicated to your Government.

Section 6.
Provision for
absence of
Governor
General.

6. Hitherto it has been the practice on the occasion of the Governor General quitting the Presidency for any other part of India, to pass an Act providing for the exercise by him of executive powers during his absence. By

section 6 of the Act now forwarded, resort to legislation in such case is rendered unnecessary, and an order of the Governor General in Council is substituted for an Act of the Legislature.

7. The only other provision of the Act relating to the Executive Council of the Governor General to which I consider it necessary to advert is section 8, which authorizes the Governor General, from time to time, to make rules and orders for the more convenient transaction of business in his Council. By the arrangement of the business already made by Your Lordship in Council, a remedy has of late years been applied to the cumbrous mode of conducting business which formerly prevailed. The expediency of such arrangements, and of carrying them to such an extent as the Governor General may think desirable for the more convenient despatch of public business, is formally recognized by section 8.

Section 8.
Power to make rules of executive business.

8. I need hardly impress upon Your Lordship the necessity of caution in framing the rules and orders so as not to exceed the limit of the discretion conferred upon the Governor General by this section of the Act. The object to be kept in view is the *more convenient transaction of business*. There is nothing in the provision of a nature to detract from the authority or responsibility of the Governor General, or of the Council.

Object of rules to be made under section 8.

9. I concur with Your Lordship that, after the system of departmental responsibility in the manner proposed shall have come into operation, the salaries of some of the Secretaryships of the Government of India will admit of reduction, and that those which now stand at 5,000*l.* per annum each might, on vacancies, reasonably be reduced to 4,000*l.* per annum.

Reduction of salary of Secretaryship to 4,000 per annum.

10. Considerable discussion and interchange of opinion between Her Majesty's Government and Your Lordship in Council has recently taken place in regard to the best mode of conducting the legislation of India, and on this subject the Act contains some very important provisions. The power of legislation, taken away from the Councils of the subordinate Presidencies by the Act of 3rd and 4th Will. 4, c. 85, is, to a great extent, to be restored to them, and new Local Legislatures are to be established in other parts of India. The legislative powers conferred on the Government of India by the abovementioned Act are left unimpaired, but under the present Act are to be exercised, for the most part, in matters of general administration, and such as affect the interests of our Indian Empire at large.

Legislative powers of Governor General in Council.

11. I proceed to notice some of the most important provisions by which these changes are to be effected.

Changes effected.

Section 10.
Selection of
Additional
Members of
Governor
General's
Legislative
Council.

12. In consequence of the repeal, by section 2 of the present Act, of section 22 of the Act of the 16th and 17th Vict., c 95, the Legislative Councillors appointed under the repealed enactment will cease to hold office in the Council on the present Act coming into operation. Provision is made by section 10 for the appointment of other additional Members of the Council of the Governor General, who are to be Members only for the purpose of making laws and regulations. They are to be selected by the Governor General from the servants of the Government and from other residents in India, European and Native, from all parts of India, the only limitation on the power of the selection being that not less than one-half of the number nominated are to be persons not holding any office under Government.

Introduction
of non-official
Members.

13. The Imperial Legislature has by this Act provided, for the first time, for the admission of Europeans independent of the Government and of Natives of India to take part in the important work of legislating for India. I have no doubt this measure will be hailed with satisfaction throughout the country. I entertain as little doubt that Your Lordship will be able to fill up these appointments with persons in every way qualified to give the Government important and valuable assistance in matters that may come before it, and I anticipate that the introduction of intelligent Native gentlemen into the Council will bring to its deliberations a knowledge of the wishes and feelings of the Native population, which cannot fail to improve the laws passed by the Council by adapting them to the wants of the great mass of the population of India.

Desirability of
appointing
officials serving
under
Local
Governments
and influential
Natives.

14. I am quite aware that there cannot but be considerable difficulty in assembling, at any one place, official and non-official persons from distant parts of India, who may bring to the Council of the Governor General the advantage of their knowledge of different parts of the country. The grant of legislative powers to Councils in other parts of India renders it less necessary to have such persons present in Your Lordship's Council, where at present the whole legislation of India is concentrated; but, nevertheless, I think it most desirable that servants of the Government in the other Presidencies, and from the North-West and the Punjab, should be summoned to a body which is to legislate on matters affecting the whole of India; and I shall be glad to find that influential Native gentlemen from distant places have, even at some personal inconvenience to themselves, responded to the call of the head of the Government to take their places in the Council when legislating for the peace and good government of their country.

15. To enable Your Lordship the more readily to avail yourself of the services of such persons as occasion may require, as well as to obviate the necessity for issuing fresh summonses simultaneously for the whole number of additional Councillors on the expiration of the term of service of those first appointed, which the immediate nomination of the entire number will impose, I think it expedient that Your Lordship should not summon at once the maximum number of members allowed by the Act, but, appointing part of them at first, should leave the remaining number to be nominated at such times and on such occasions as Your Lordship may think proper.

Additional
Members to
be appointed
by degrees.

16. It will be the duty of Your Lordship in Council to make in the first instance, subject to subsequent alteration at meetings for the purpose of making laws and regulations, the rules for the conduct of business at such meetings. The experience of the past has shown, as it appears to me, that an error was committed in adopting numerous rules under the name of "Standing Orders," and thereby imparting to the proceedings of the Council a much more formal character than was contemplated by the Act of 1853. The rules of procedure at meetings for making laws and regulations should be few and simple, and the business should be conducted, agreeably to Your Lordship's suggestion, much in the same way as in a committee or a commission. This is the more indispensable in the Council of the Governor General as well as in those of the North-West and the Punjab, where Native gentlemen unacquainted with the English language may not improbably be present, and who will be prevented from taking their part in the business of the Council, unless some such arrangement be made.

Section 18.
Rules for con-
duct of legis-
lative busi-
ness.

17. No law, except one arising out of some pressing emergency, should be passed without full opportunity for mature deliberation and discussion, and the intervals of discussion should be such as to allow the Members of Council adequate opportunity of reflection and inquiry.

Mature deli-
beration and
discussion of
laws.

18. As to the publicity which should attend the proceedings of the Councils at meetings for making laws and regulations, I concur very much in the remarks of Your Lordship in your letter of the 15th January last. In the local Councils of Calcutta, Madras and Bombay, in which it is probable that all the Members, including Natives, will speak the English language, I am not disposed to interfere with the present practice; but it may be necessary to vary the mode of publishing the reports of discussions, as suggested by Your Lordship, in the Council of the Governor General, and of the North-West Provinces and the Punjab. Your Lordship has stated, in your

Publicity as
to legislation.

Despatch of the 15th January last, the evil which has been caused by the publication of speeches delivered in the Legislative Council, and the impression made by them on the Native population. Care should be taken, by an early publication of the views of the Government to prevent the public mind being misled, and other means will probably occur to you for meeting this particular difficulty.

Publication of
authoritative
reports of pro-
ceedings.

19. I think it of the highest importance that correct reports of the proceedings of the several Councils, under the authority of the Council itself, should be sent forth to the public, and I request that you will take into your consideration measures for ensuring this very desirable object.

Copy of rules
called for.

20. You will transmit to me a copy of the rules as soon as you shall have prepared them.

Legislative
Councils not
to sit perma-
nently.

21. I entertain a decided opinion that the Councils should not sit permanently for the purpose of making laws and regulations, but should be called together by summons from the head of the Government when projects of law, prepared by the proper officers under the supervision of the Executive Government, are ready for discussion. It is probable that, by adopting this course, Bills will come before the Council better prepared than when hurriedly framed for a Council in session, and will be better considered by the Council when brought before them, and thus much unnecessary legislation will be avoided, and much public time saved. The adoption of this plan, moreover, will be necessary to secure for you the services of Native gentlemen at a distance, and of those persons whose time, like that of the members of the mercantile communities of the Presidency-towns, is much occupied with their own private engagements.

President in
absence
of
Governor
General.

22. You will observe that no provision is made for the appointment of a Vice-President at meetings for the purpose of making laws and regulations. In the absence of the Governor General and the President of the Council, the senior Member of the Council will preside.

Independence
of Members
of Legislative
Councils,
petitions, etc.

23. The additional Councillors provided for by the Act are to be called in to assist the Council of the Governor General in matters of legislation. Members of the Council will of course exercise their independent judgment in regard to matters brought before them, but the Council at its meetings for making laws and regulations is not to be a body separate and distinct from the Council of the Governor General. Petitions relating to legislative matters should be addressed to the Governor General, or Governor, or Lieutenant-Governor in Council, as the case may be; and, in recording its proceedings, each Council should be designated according to the form followed in the Act, and no other.

24. I may frankly state to Your Lordship in Council that one object of section 19 is to prevent the Legislature from interfering with the functions of the Executive Government, and occupying its time with matters which are not directly or immediately connected with the special duties assigned to it. The closing proviso of the section is in accordance with Lord Dalhousie's recommendation to the Council in his Minute of the 17th May, 1854, and numbers 60 and 61 of the Standing Orders. This section renders unnecessary any separate reply to your letters in the Legislative Department, Nos. 6 and 7, dated, respectively, the 14th and 18th of March last.

Section 19.
Non-interference with Executive Government.

25. Sections 20, 21 and 22 are re-enactments of former provisions, with such alterations as are rendered necessary by the changes effected by the present Act, and by the transfer of the Government of India from the East India Company to the Crown.

Sections 20, 21 and 22.

26. By section 23 the Governor General of India is vested with a new and extraordinary power of making and promulgating Ordinances in cases of emergency on his own responsibility. It is due to the supreme authority in India, who is responsible for the peace, security and good government of that vast territory; that he should be armed with this power, but it is to be called into action only on urgent occasions, the reasons for a resort to it should always be recorded, and these, together with the Ordinance itself, should be submitted, without loss of time, for the consideration of Her Majesty's Government.

Section 23.
Ordinances.

27. By section 25 doubts are removed as to the validity of rules and regulations which have been passed by any of the Governments in India for the territories known as "non-regulation provinces." You will observe, however, that henceforth legislative measures affecting any of the territories, regulation or non-regulation, under the dominion of Her Majesty at the date of the passing of the Act, must be passed either by the Council of the Governor General, or by that of the Government to which such territories may be subject.

Section 25.
Laws for non-regulation provinces.

28. It has been found necessary, on some occasions, to grant leave of absence for a short period, on medical certificate, to a Member of the Executive Council, though he was not admitted by law to this privilege. This has now been sanctioned by section 26, and by section 27 the Governor General, or the Governor of a minor Presidency, as the case may be, is authorized, when no provisional appointment has been made from Home, to make a temporary appointment to the office of Councillor either on the occurrence of a vacancy, or when the incumbent may be absent.

Sections 26 and 27.
Provision for leave on medical certificate of Ordinary Members.

Sections 28 to 41. 29. It is unnecessary for me to enter into any detail as to sections 28 to 41, which, *mutatis mutandis*, contain, in regard to the Governments of Madras and Bombay, the same provisions as have been enacted in previous corresponding sections, in relation to the Supreme Government.

Section 42. 30. By section 42 the power is conferred upon the Governor in Council (constituted as stated in section 29) of each of those Presidencies, to make laws and regulations for the territories subject to his authority. Your Lordship will observe, however, that while the power of legislation is, to a great extent, thus restored to the minor Presidencies, much greater control over the exercise of that power is given to the Governor General of India than was the case before the passing of the Act 3rd and 4th Will. 4, c. 85. The rules for the conduct of business at meetings of the Councils for making laws and regulations are to be submitted for the sanction of the Governor General in Council,* and no law or regulation is to have validity until sanctioned by the Governor

* Section 37.
† Section 40.

General.†

Division of legislative measures between Imperial and local Legislative Councils. 31. It is advisable that the several Legislative Councils should undertake, as far as possible, the necessary legislative business for the territories under their respective jurisdictions. The circumstances of different parts of India are widely different, and may, even under the same general head of administration, require widely different measures of a practical character; and it will be no ground for condemning a measure on any particular subject passed for one Presidency that it differs, in some respects, from another measure on the same subject for another Presidency. There will, however, always remain some important subjects to which, for the most part, general legislation alone is applicable, and which should be reserved to be dealt with by the Council of the Governor General. Such are the subjects specified in section 43 of the Act. If, however, it should appear to the Governor General more expedient that enactments on any of those subjects, so far as regards any Presidency or Lieutenant-Governorship, may be more conveniently passed by the Governor or Lieutenant-Governor in Council, legislation in regard to those subjects by the Local Legislature, with the previous sanction of the Governor General, is permitted by the terms of the section.

General powers of Governor General's Legislative Council affected. 32. There is nothing in the terms of the section, or in any other part of the Act, which takes away from the Council of the Governor General the power of legislation in regard to all matters whatsoever connected with any part of Her Majesty's dominions in India, and it is possible that there may be other subjects than those enumerated,

which may be considered as properly coming within the cognizance of the highest legislative authority. The division of legislative measures into two classes will not be difficulty, and as a general rule the Supreme Legislature should as little interfere with matters of local administration as a Local Legislature should be permitted to interfere with those matters of the general administration which are reserved to be dealt with by the Council of the Governor General.

33. By sections 44 to 48, inclusive, the Governor General in Council is empowered to extend the provisions of the Act touching the making of laws and regulations for the Presidencies of Madras and Bombay to the Bengal Division of the Presidency of Fort William, to the North-West Provinces, the Punjab, and to any other Provinces which may hereafter be placed under a Lieutenant-Governor under section 46. Your Lordship in Council will decide upon the number of additional Councillors to be nominated by each Lieutenant-Governor, which in no case should exceed the number allowed by the Act to the Governors of Madras and Bombay.

Sections 44 to 48. Establishment of local Legislative Councils in the Lower Provinces, the North-West Provinces and the Punjab.

34. I gather from communications already received that Your Lordship will deem it expedient to give effect without delay to the provisions of the Act in Bengal, the North-West Provinces and the Punjab. Her Majesty's Government are of opinion that, as regards the Bengal Division of the Presidency of Fort William, the change should be introduced with as little delay as possible: and I leave it to Your Lordship to determine at what time you will take the same course as regards the North-West Provinces and the Punjab.

Local Legislative Councils in Lower Provinces of Bengal to be established without delay

35. With reference to the foregoing remarks, I have now to request that Your Lordship in Council will take immediate measures for placing the Council of the Governor General for making laws and regulations on the footing prescribed by the Act, and enter into communication with the Governments of Madras and Bombay respecting the adoption of the necessary measures for bringing the Act into operation in those Presidencies. When your measures shall be sufficiently matured to admit of practical effect being given to the provisions of the Act in your own Council, and in the Councils of the Governors of Madras and Bombay, you will announce the same by proclamation in the official Gazettes of the several Presidencies, until which time the power of making laws and regulations will, under section 16 of the Act, continue to be exercised by the Council of the Governor General as constituted by the Act of the 16th and 17th Vict., c 95.

Immediate measures to be taken first in connection with Imperial, Madras and Bombay Legislative Councils.

36. You will then take the necessary steps for extending such of its provisions as relate to the making of laws and regulations in the Presidencies of Madras and Bombay,

Bengal Council next to be established.

to the Bengal Division of the Presidency of Fort William. It will be seen, from section 49 that the proclamation by the Governor General in Council for constituting any Council for the purpose of making laws and regulations must be transmitted to the Secretary of State for the previous sanction of the Crown. To this provision you will carefully adhere, forwarding the proclamation relating to the Bengal Division with as little delay as possible, and those relating to the North-West Provinces and the Punjab either with it, or at such future periods as Your Lordship in Council may deem expedient.

Section 50.
Sudden
vacancy in
office of
Governor
General.

37. With regard to section 50, it is only necessary to observe that, when no provisional successor to the office of Governor General shall be in India, any vacancy occurring in that office will, until the arrival of a successor appointed by Her Majesty, be supplied by one of the highest functionaries in India holding office under the immediate appointment of the Crown, and until he assumes the function of Governor General the Government will be administered, as heretofore, by the senior Ordinary Member of Council, as would be done under the provisions of the 3rd and 4th Will. 4, c 85, section 62, if no provisional successor were on the spot.

**Pending
projects of
legislation.**

38. Of the projects of law now under consideration, I am very anxious that the Code of Criminal Procedure should be passed before the present Act comes into operation. Of the rest, some have got to that stage which renders it advisable that they should be enacted by the Legislature as at present constituted, while others, especially those of a local character, may be withdrawn, and re-introduced, if necessary, into the Councils to which, under the new system, they will respectively belong.

**Economy in
establish-
ments.**

39. Your Lordship in Council will impress upon the subordinate Governments the necessity of keeping the establishments required for conducting the legislative business of the Councils at as low a point as is consistent with efficiency.

Conclusion.

40. It only remains for me, in conclusion, to express the great gratification I feel in being permitted to avail myself of Your Lordship's assistance in giving effect, before you quit India, to the intentions of the Imperial Legislature. I look with great confidence to the advantage which will be derived from the commencement of the new system under Your Lordship's directions. Your Lordship's experience in India, and the attention which you have given to this most important subject, render Your Lordship most eminently fitted to give effect to the measures introduced by the Act for the Government and legislation of India; and the successful accomplishment of this may be the last, though it will not be the least, of the services which you will have rendered to your Sovereign in that country.

APPENDIX III.

DESPATCH TO THE GOVERNMENT OF INDIA, NO. 15 OF
1892.

FROM

THE RIGHT HON'BLE VISCOUNT CROSS,

Her Majesty's Secretary of State for India.

India Office, London, the 30th June, 1892.

MY LORD MARQUIS,

I FORWARD, herewith, a copy of the Act recently passed by Parliament* to amend the Statute under which the meetings of the several Councils in India assembled for the purpose of making laws and regulations have been held since 1861.

2. That Statute imported into the legislative constitution of British India, as a recognized principle of public policy, provisions for the admission into all the Councils, when assembled for the purpose of making laws, of additional Members, Native and European, a certain proportion of whom must be unconnected officially with the executive Governments, and who would take an independent and responsible share in the legislation of the country. The anticipations upon which this important step was taken in 1861 have, during the past thirty years, been amply fulfilled. There can be no doubt that the Governor General's Council has been relieved of much business which the local Councils, which were then finally established, have proved themselves thoroughly competent

Success of
Statute of
1861.

* The Indian Councils Act, 1892, see *ante*, pp. 33—38.

to undertake; while the whole legislative system of India has benefited from the presence in the Councils of the additional Members who have brought much ability, experience and special knowledge to bear upon the discharge of their duties.

Extension of
functions of
Legislative
Councils
desirable.

3. Upon these considerations, and having regard to the progress of administration in recent years, to the material and moral improvement of the country generally, and to the expediency of strengthening the Councils and extending their functions in some proportion with the growing attention in India to public affairs, Her Majesty's Government, after considering the recommendations of Your Excellency and of Your Excellency's predecessor, have induced Parliament to resolve that the Councils may with advantage be enlarged. It has been determined, moreover, upon the same grounds, to relax in some degree those provisions of the original Act, which confine the proceedings of the Councils to the discussion and enactment of Bills introduced at their meetings. Accordingly, in the Act, which has just become law, certain amendments have been made upon which it is right that I should take this opportunity of recording some observations.

Section 1.
Provision for
increase in
number of
Additional
Members.

4. It is provided, in the first place, that the additional Members to be summoned by the Governor General to his Council (and by the Governors of Madras and Bombay to the Councils of those Presidencies), when met for the purpose of making laws and regulations, may be augmented up to a limit fixed in the Act. The Governor General is also empowered to make a considerable increase of the number of the Members who may be summoned for the same purpose by the Lieutenant-Governors of Bengal and of the North-West Provinces. Your Excellency will notice that while these Members are to be nominated, as heretofore, by the Governor General, the Governors and the Lieutenant-Governors, respectively, the Governor General in Council is now authorized, with the approval of the Secretary of State, to make regulations as to the conditions under which such nominations shall be made, and to prescribe the manner in which the regulations shall be carried into effect.

5. In the second place, the Governor General in Council is invested with power to make rules from time to time authorizing the discussion of the Annual Financial Statement, and the asking of questions under such conditions as shall be in the said rules prescribed. The Act also contains similar provisions in regard to the Councils of the Governors and Lieutenant-Governors.

Section 2.
Provision for
discussion of
Annual
Financial
Statement
and asking of
questions.

6. I have no doubt that Your Excellency in Council and the several Local Governments will lose no time and spare no pains in considering and preparing the rules necessary for carrying into operation these important provisions, which have been introduced with the avowed objects of bringing the Legislatures into closer relation with the best representatives of public opinion in India, and of multiplying the opportunities for an interchange of views and information between the Governments and their Councils. I need hardly add that the ultimate nominating authority still rests with those to whom it was entrusted by the Statute of 1861, or that the responsibility attaching to the careful exercise of this authority by no means diminishes as the number of the non-official Members is increased, and as the scope of their attributes is enlarged. It appears to me probable, nevertheless, that the diffusion in the more advanced provinces of education and enlightened public spirit, and the recent organization of local self-government, may have provided in some instances ways and means of which the Governments may properly avail themselves in determining the character that shall be given to the representation of the views of different races, classes and localities. Where corporations have been established with definite powers, upon a recognized administrative basis, or where associations have been formed upon a substantial community of legitimate interests, professional, commercial or territorial, Your Excellency and the Local Governors may find convenience and advantage in consulting from time to time such bodies, and in entertaining at your discretion an expression of their views and recommendations with regard to the selection of Members in whose qualifications they may be disposed to confide. It is in full reliance upon the benefits to be expected from enlisting the support and co-operation of competent Members, and from a more extensive devolution upon the Provincial Councils of the legislative business that particularly concerns the populations with whose needs and circumstances these

General
instructions.

Councils should be specially conversant, that I recommend this Statute to the very careful attention of Your Excellency's Government, and of the other Governments in India whose duty it will be to give effect to its provisions.

APPENDIX IV.

DESPATCH FROM THE GOVERNMENT OF INDIA, NO. 22 OF
1898.

To

THE RIGHT HON'BLE LORD GEORGE F. HAMILTON,

Her Majesty's Secretary of State for India.

Simla, the 1st September, 1898.

MY LORD,

IN Your Lordship's despatch No. 33 (Legislative), dated the 22nd October, 1896, certain observations were made regarding delays on our part in dealing with proposals for legislation in local Councils, and we were asked to issue orders laying down a limit of time within which any intimation by us of doubt or disapproval should be made, the Local Government concerned being entitled, on the expiration of that period without any intimation being received, to assume that their measure is approved.

2. We have given this question our careful consideration, and the conclusion at which we have arrived is that we ought to bind ourselves to intimate, within the interval of two months which is allowed to Your Lordship in the same connection, any objections entertained by us to the introduction of a proposed Bill in a subordinate Council, and that, if no communication is received before that limit is passed, it may be assumed by Local Governments that we, as well as Your Lordship, have no present intention of interfering. Where the law requires the previous sanction of the Governor General, it is clear that no such assumption can lawfully be made; but we think that, in cases in which the Government of India are asked to approve of the penal clauses of a Bill, as suggested in Sir Charles Wood's despatch No. 35 (Legislative), dated the 1st December, 1862,* we may promise a reply within the shorter period of one month, and that Local Governments may take it that penal clauses are sanctioned, if not disallowed within that period.

Interval to be allowed to Government of India for consideration of Bills of Local Councils.

3. We propose, therefore, to issue orders on these lines, and in framing them we have taken the opportunity to recast and subject to general revision the existing *Instructions to Local Governments*, which were drawn up in 1888 and were forwarded to the India Office with our despatch No. 22, dated the 25th August of that year. These *Instructions* have proved unsatisfactory in practice, as they

Revision of instructions on the subject.

* See *Selection of Papers relating to the Constitution and Functions of the Indian Legislative Councils*, p. 216, and App. I, ante, p. 97.

involve a somewhat complicated procedure under which different Departments of the Government of India have to be addressed at different stages in connection with the introduction in, and the passing of a Bill through, a local Council. A copy of the new *Instructions** which we intend, if Your Lordship raises no objection, to issue on the 1st October next, is forwarded herewith. It will be observed they will allow considerable latitude to Local Governments in the matter of proceeding with legislation; but we believe that there is nothing in them contrary to the spirit of the orders contained in Lord Salisbury's despatch No. 9 (Legislative), dated the 31st March, 1874†, and in any case we think that, in these days of enlarged and more representative Councils, it is desirable to give a large measure of discretion to Local Governments, trusting to their knowledge of the Governor General's power of withholding his assent and Her Majesty's power of disallowance to prevent such discretion being abused.

* See *ante*, pp. 73—76.

† See *Selection of Papers relating to the Constitution and Functions of the Indian Legislative Councils*, p. 180.

APPENDIX V.
 LETTERS TO LOCAL GOVERNMENTS ACCOMPANYING
 INSTRUCTIONS REGARDING LEGISLATION IN
 LOCAL COUNCILS.

Nos. 1481—1482.

FROM

J. M. MACPHERSON, ESQ., C.S.I.,
 Secretary to the Government of India,
 Legislative Department,

TO

THE CHIEF SECRETARY TO THE GOVERNMENT
 OF MADRAS.

" " " " " OF BOMBAY.

Simla, the 6th October, 1898.

SIR,

THE existing instructions regarding legislation in local Councils have recently been under the consideration of the Government of India and subjected to revision, and I am now directed to forward a copy of the revised instructions,* and to request that, with the permission of the Governor in Council, they may henceforth be observed in supersession of those previously issued.

2. I am also to request that, in supersession of existing orders, the following number of copies of the Proceedings of Council, of Acts, and of Bills and connected papers, may in future be sent to this Department for record and for transmission to the Secretary of State, namely:—

	No. of copies.
Of the Proceedings of Council for office files ...	12
Of Acts for office files	46
Of Bills and connected papers submitted to the Government of India in accordance with the revised instructions	25

* See *ante*, pp. 73—76.

Bill as introduced.
Statement of Objects
and Reasons. "

Report of Select
Committee (if any).

Amended Bill (if
any).

Papers relative to the
Bill.

Bill as passed.

Extracts from Pro-
ceedings of Council re-
lating to the Bill in its
several stages (the
dates of the meetings
being mentioned in the
forwarding letter).

3. In the case of Bills submitted for the assent of the Governor General under section 40 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67)*, 25 copies of each of the papers specified on the margin should in each instance be furnished.

4. Spare copies of Bills and connected papers should be forwarded simultaneously with a Bill or the draft of a Bill, as the case may be, submitted under the revised instructions, but spare copies of Reports of Select Committees and of Bills as amended in Council should be supplied only when it is found necessary to proceed under rule 7.

5. Copies of communications to the Executive Departments of the Government of India of the kind referred to in rule 1 (2) of the revised instructions need not be sent to this Department.

6. It will be observed that these instructions leave to the Local Government more discretion than hitherto in connection with both the initiation of legislation and the conduct of legislative measures during their progress through the local Council. The Government of India have no doubt that this discretion will be exercised with care so as to obviate, as far as possible, all necessity for interference in the later stages by either the Governor General or Her Majesty in exercise of the powers conferred by sections 40 and 41, respectively, of the Statute of 1861†. The new rules will also limit the time within which any objections on the part of the Government of India to local legislation are to be intimated; and, finally, it is hoped that they will simplify matters by requiring correspondence which has had heretofore to be conducted with different departments of the Government of India, to be conducted with the Legislative Department alone.

NOS. 1483-1486.

FROM

J. M. MACPHERSON, ESQ., C.S.I.,

Secretary to the Government of India,
Legislative Department,

* See *ante*, p. 18

† See *ante*, pp. 18 and 19.

To

THE CHIEF SECRETARY TO THE GOVT. OF BENGAL.

"	"	"	"	"	THE N.-W. P. & OUDH.
"	"	"	"	"	THE PUNJAB.
"	"	"	"	"	BURMA.

Simla, the 6th October, 1898.

SIR,

THE existing instructions regarding legislation in local Councils have recently been under the consideration of the Government of India and subjected to revision, and I am now directed to forward a copy of the revised instructions,* and to request that, with the permission of His Honour the Lieutenant-Governor, they may henceforth be observed "in

No. 608, dated the 11th March, 1887, to the Government of Bengal.

" 609,	"	"	"	"	"	the N.-W. P. & Oudh.
" 141,	"	21th June, 1887,	"	"	"	the Punjab.
" 1142,	"	"	"	"	"	Burma.

supersession of those issued under cover

of the letter noted on the margin.

2. I am also to request that, in supersession of existing orders, the following number of copies of the Proceedings of Council, of Bills and connected papers, and of Acts and connected papers, may in future be sent to this Department for record and for transmission to Her Majesty's Secretary of State, namely:—

	No. of copies.
Of the Proceedings of Council—	
For transmission to the Secretary of State	10
For the Society of Comparative Legislation, London	1
For office files	12
Of Bills and connected papers submitted to the Government of India in accordance with the revised instructions	25
Of Bills as introduced in Council, with Statements of Objects and Reasons, and extracts from Proceedings of Council relating thereto	25
Of Acts—	
For transmission to the Secretary of State	60
For All Souls College, Oxford	1
For the Society of Comparative Legislation, London	1
For sale through the India Office	10
For office files	46

* See *note*, pp. 73–76.

Bill as introduced.
Statement of Objects
and Reasons.

Report of Select
Committee (if any).
Amended Bill (if
any).

Papers relative to the
Bill.

Bill as passed.
Extracts from Pro-
ceedings of Council re-
lating to the Bill in its
several stages (the dates
of the meetings being
mentioned in the for-
warding letter).

3. In the case of Bills submitted for the assent of the Governor General under section 40 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67),* 25 copies of each of the papers specified on the margin should in each instance be furnished.

4. Two copies of each Act passed and of the papers connected therewith, including extracts from the Proceedings of Council relating thereto, should also be supplied for transmission to the Secretary of State.

5. Spare copies of Bills and connected papers should be forwarded simultaneously with a Bill or the draft of a Bill, as the case may be, submitted under the revised instructions, but spare copies of Reports of Select Committees and of Bills as amended in Council should be supplied only when it is found necessary to proceed under rule 7.

6. Copies of communications to the Executive Departments of the Government of India of the kind referred to in rule 1 (2) of the revised instructions need not be sent to this Department.

7. Copies of Proceedings and of Acts for transmission to the Secretary of State (including those intended for All Souls College, for the Society of Comparative Legislation in England, and for sale) should be forwarded separately to this Department at Calcutta with a covering letter stating that they are forwarded for that purpose, the price to be fixed in the case of sale being intimated at the same time.

8. It will be observed that these instructions leave to the Local Government more discretion than hitherto in connection with both the initiation of legislation and the conduct of legislative measures during their progress through the local Council. The Government of India have no doubt that this discretion will be exercised with care so as to obviate, as far as possible, all necessity for interference in the later stages by either the Governor General or Her Majesty in exercise of the powers conferred by sections 40 and 41, respectively, of the Statute of 1861†. The new rules will also limit the time, within which any objections on the part of the Government of India to local legislation are to be communicated, and, finally, it is hoped that they will simplify matters by requiring correspondence which has had heretofore to be conducted with different departments of the Government of India, to be conducted with the Legislative Department alone.

* See *ante*, p. 18.

† See *ante*, pp. 18 and 19.

APPENDIX VI.

*Comparative Statement showing the origin of the revised
Rules of Executive Business, etc.*

Rule of 1891 or other order now superseded.	Corresponding Rule of Executive Business.	Corresponding Secretariat Instruction.
I	2	.....
II	.....	1
III	.....	2
IV	.....	3
V	.....	4
VI	.....	6
VII	5 (2)	.....
VIII	3	.....
IX	4	.....
X, first part.	5 (1) and 6	.....
X, second part.	.....	.....
XI	7	.....
XII	8	.....
XIII	35	.....
XIV	.....	5
XV	.....	10
XVI	9	.....
XVII	11	.....
XVIII	12	.....
XIX	.....	7
XX	.....	8
XXI	.....	9
XXII	17 and prov. (1)	.....
XXIII	18	.....
XXIV	19	.....
XXV, paras. 1, 2 & 3.	.....	11
XXV, paras. 4 & 5.	20 (1), (2)	.....
XXVA	20 (3)	.....
XXVI	22 (1), (2), (3)	.....
XXVII	22 (4)	.....
XXVIII	25 (2)	.....
XXIX, paras. (1), (2) & (3).	28	.....
XXIX, para. (4).	.....	.....
XXX	32	.....
XXXI	27 (1)	.....
XXXII	17, prov. (2)	.....
XXXIII	33	.....
XXXIV	14	.....
XXXV	15	.....
XXXVI	16	.....
XXXVII	36	.....
XXXVIII	37	.....
XXXIX	38	.....
XL, paras. 1 to 5.	.....	12
XL, para. 6.	.....	15

*Comparative Statement showing the origin of the revised
Rules of Executive Business, etc.—concl'd.*

Rule of 1893 or other order now superseded.	Corresponding Rule of Executive Business.	Corresponding Secretariat Instruction.
XLI.	.....	14
XLII	.....	13
XLIII	39 (1)	20 (1)
XLIV	39 (2)	20 (2)
XLV	1	.....
Resolution of 12th July, 1873, §§ 1 to 5.	21 and 22 (1), (4).	.....
Resolution of 12th July, 1873, § 6.	.....	.....
Resolution of 31st January, 1878.	23	.....
Memorandum of 7th November, 1888, § (1).	31	.....
Memorandum of 7th November, 1888, § (2).	34	.....
Memorandum of 7th November, 1888, § (3).	27 (2)	.....
Memorandum of 7th November, 1888, § (4).	22 (5)	.....
Instructions inserted after page 61 of <i>Green Pamphlet</i> .	28	.....
Unofficial Memorandum of 21st May, 1890, inserted after page 61 of <i>Green Pamphlet</i>.	.....	.....

NOTE.—*Secretariat Instructions Nos. 16, 17, 18 and 20 are new; as also are the following Rules of Executive Business, namely:—Rules 10, 23, 24, 25, 28, 30, 40 and 41.*

FORMS.

No.

1. Substantive appointment of Ordinary Member of Governor General's Executive Council.
2. Provisional appointment of Ordinary Member of Governor General's Executive Council.
3. Temporary appointment of Ordinary Member of Governor General's Executive Council.
4. Grant of leave to Ordinary Member of Governor General's Executive Council.
5. Order appointing place for assembling of Governor General's Executive Council.
6. Order appointing time and place for assembling of Governor General's Legislative Council.
7. Nomination of selected Additional Member of Governor General's Legislative Council.
8. Nomination of elected Additional Member of Governor General's Legislative Council.
9. Resignation of Additional Member of Governor General's Legislative Council.
10. Summons issued to Members at beginning of each Session of Governor General's Legislative Council.
11. Passing of law by Governor General's Legislative Council and assent of Governor General thereto.
12. Passing of law by Local Legislative Council and assent of Governor (or Lieutenant-Governor) and of Governor General thereto.
13. Notification making and promulgating an Ordinance under section 23 of the Indian Councils Act, 1861.
14. Proclamation establishing new local Legislative Council.
15. Notification publishing a Regulation made under the Government of India Act, 1870.
16. Report of Select Committee.
17. Journal of Proceedings of Governor General's Legislative Council.
18. Full report of Proceedings of Governor General's Legislative Council.
19. Statement regarding the translation and publication by Local Governments of the Acts of the Governor General's Legislative Council.
20. List of Legislative Business pending in Governor General's Legislative Council.

No. 1.*

Substantive appointment of Ordinary Member of Governor General's Executive Council.

A vacancy having occurred in the office of an Ordinary Member of the Council of the Governor General of India by [the appointment of the Honourable Sir A. B. to the office of Lieutenant-Governor of _____], Her Majesty the Queen, Empress of India†, has been graciously pleased to appoint Mr. C. D. to be an Ordinary Member of the Council of the Governor General of India.

The Honourable Mr. C. D. has, on this day, taken upon himself the execution of his office under the usual salute.

Y. Z.,

Secretary to the Government of India.

No. 2.‡

Provisional appointment of Ordinary Member of Governor General's Executive Council.

Mr. A. B., having under section 5 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67)§, been appointed by Her Majesty the Queen, Empress of India, to be a Provisional Member of the Council of the Governor General of India, and a vacancy having been caused in the said Council by [the departure on leave of absence under medical certificate of the Honourable Mr. C. D.], the Honourable Mr. A. B. has on this day taken upon himself the execution of his office under the usual salute.

Y. Z.,

Secretary to the Government of India.

No. 3 ||

Temporary appointment of Ordinary Member of Governor General's Executive Council.

A temporary vacancy having occurred in the office of an Ordinary Member of the Council of the Governor General by [the departure on leave of the Honourable Mr. A. B.], the Governor General in Council is pleased, in exercise of the power conferred by section 27 of the Indian Councils

* Cf. Home Department's Notification No. 271, dated the 9th April, 1898, *Gazette of India*, 1898, Pt. I, p. 379. See s. 3 of the Indian Councils Act, 1861, *ante*, pp. 5-6.

† Her Majesty should be so styled in all instruments, "save and except all Charters, Commissions, Letters Patent, Grants, Writs Appointments, and other like instruments, not extending in their operation beyond the United Kingdom"—see the Royal Titles Act, 1876 (39 Vict., c. 10), and proclamation is sued thereunder in *Gazette of India*, 1877, Pt. I, p. 16.

‡ Cf. Home, Revenue and Agricultural Department's Notification No. 1130, dated the 12th July, 1880, *Gazette of India*, 1880, Pt. I, p. 362.

§ See *ante*, pp. 6-7.

|| Cf. Home Department's notification No. 761, dated the 18th October, 1897, *Gazette of India*, 1897, Pt. I, p. 953.

Act, 1861 (24 & 25 Vict., c. 67)*, to appoint Mr. C. D. to act temporarily as an Ordinary Member of the Council of the Governor General.

Y. Z.,

Secretary to the Government of India.

No 4.†

Grant of leave to Ordinary Member of Governor General's Executive Council.

In exercise of the power conferred by section 26 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67)‡, the Governor General in Council is pleased to grant to the Honourable Mr. A. B., an Ordinary Member of the Council of the Governor General, leave of absence under medical certificate for a period of months, with effect from the instant, or any subsequent date on which he may avail himself of it.

Y. Z.,

Secretary to the Government of India.

No. 5.§

Order appointing place for assembling of Governor General's Executive Council.

In exercise of the power conferred by section 9 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67)§§, the Governor General in Council is pleased to direct that the Council of the Governor General shall assemble at , in the territories under the administration of the Lieutenant-Governor of .

Y. Z.,

Secretary to the Government of India.

No. 6.¶

Order appointing time and place for assembling of Governor General's Legislative Council.

In exercise of the power conferred by section 17 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67)||, the Governor General in Council is pleased to appoint day, the , 189 , at 11 A.M., as the time, and the Council Chamber in the as the place, for a

* See ante, pp. 14-15.

† Cf. Home Department's Notification No. 735, dated the 8th October, 1897, *Gazette of India*, 1897, Pt. I, p. 911.

‡ See ante, p. 14.

§ Cf. Home Department's No. 2464, dated the 26th November, 1897, *Gazette of India*, 1897, Pt. I, p. 1057.

§§ See ante, p. 8.

¶ Cf. Legislative Department's Notification No. 6, dated the 23rd June 1898, *Gazette of India*, 1898, Pt. I, p. 677.

See ante, p. 10.

meeting of the Council of the Governor General for the purpose of making Laws and Regulations.

Y. Z.,

Secretary to the Government of India.

No. 7.*

Nomination of selected Additional Member of Governor General's Legislative Council.

In exercise of the power conferred by section 10 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67)†, and section 1 of the Indian Councils Act, 1892 (55 & 56 Vict., c. 14)‡, the Governor General is pleased to nominate Mr. A.B., [of the Indian Civil Service], to be an Additional Member of the Council of the Governor General for the purpose of making Laws and Regulations.

C. D.,

Secretary to the Government of India.

No. 8.§

Nomination of elected Additional Member of Governor General's Legislative Council.

Whereas the non-official Members of the Council of the Lieutenant Governor of—have, in accordance with the regulations published with the Notification of the Government of India in the Legislative Department, No. 19, dated the 23rd June, 1891§§, recommended the Hon'ble [Nawab] A. B. for nomination as an Additional Member of the Council of the Governor General for the purpose of making Laws and Regulations;

In exercise of the power conferred by section 10 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67)†, and section 1 of the Indian Councils Act, 1892 (55 & 56 Vict., c. 14)‡, the Governor General is pleased to nominate the said Hon'ble [Nawab] A. B. to be an Additional Member of the said Council of the Governor General.

Y. Z.,

Secretary to the Government of India.

* Cf. Legislative Department's Notification No. 42, dated the 10th August 1893, *Gazette of India*, 1898, Pt. I, p. 889.

† See *ante*, pp. 8—9.

‡ See *ante*, p. 35.

§ Cf. Legislative Department's Notification No. 10, dated the 3rd Aug 11, 1898, *Gazette of India*, 1898, Pt. I, page 867.

§§ See *ante*, pp. 89-92.

No. 9.*

*Resignation of Additional Member of Governor General's
Legislative Council.*

The Governor General is pleased to accept the resignation by the Hon'ble Mr. A. B. of his office of Additional Member of the Council of the Governor General for the purpose of making Laws and Regulations.

Y. Z.,

Secretary to the Government of India.

No. 10.

*Summons issued to Members at beginning of each Session
of the Governor General's Legislative Council.*

No.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

, the , 189 .

The Governor General in Council having, in exercise of the power conferred by section 17 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67)†, appointed day, the , 189 , at 11 A.M., as the time, and the Council Chamber in the , as the place, for a meeting of the Council of the Governor General for the purpose of making Laws and Regulations,

Your Excellency is
Your Honour is
you, the Hon'ble Mr. A. B., are hereby summoned to the said meeting at the time and place aforesaid.

By order of the Governor General in Council,

Y. Z.,

Secretary to the Government of India.

* Cf. Legislative Department's Notification No. 9, dated the 20th July, 1898, *Gazette of India*, 1898, Pt. 1, p. 795; and see s. 12 of the Indian Councils Act, 1861, *ante*, p. 9.

† See *ante*, p. 10.

NO. 11.*

Passing of law by the Governor General's Legislative Council and assent of Governor General thereto.

[Endorsed at end of Bill as passed.]

This Bill was passed at a Meeting of the Council of the Governor General of India for the purpose of making Laws and Regulations on the day of
189 .

E.,
President.

I assent to this Bill.

E.,
Viceroy and Governor General.

The , 189 .

(An authentic copy.)

Y. Z.,
*Secretary to the Government of India,
Legislative Department.*

NO. 12.†

Passing of law by Local Legislative Council and assent of Governor (or Lieutenant-Governor) and of Governor General thereto.

[Endorsed at end of Bill as passed.]

This Bill was passed by the Council of the [Lieutenant-] Governor of at a meeting held for the purpose of making Laws and Regulations on the , 189 .

A. B.,
President.

I assent to this Bill.

A. B.,
[Lieutenant-]Governor.

The , 189 .

(True copy.)

C. D.,
*Assistant Secretary to the Government of ,
Legislative Department.*

I assent to this Law.

E.,
Viceroy and Governor General.

The

, 189 .

(An authentic copy.)

Y. Z.,
*Secretary to the Government of India,
Legislative Department.*

* See s. 20 of the Indian Councils Act, 1861, *ante*, p. 11.

† See ss. 39 and 40 of the Indian Councils Act, 1861, *ante*, pp. 18-19.

No. 13.*

Notification making and promulgating an Ordinance under section 23 of the Indian Councils Act, 1861.

Whereas it is expedient to empower the Lieutenant-Governor of Bengal to prohibit dramatic performances which are scandalous, defamatory, seditious, obscene or otherwise prejudicial to the public interest ;

And whereas, pending the consideration and enactment by the Governor General in Council of a law conferring such power, it is expedient to confer the same by an Ordinance under section 23 of the Indian Councils Act [1861] ; *
24 & 25 Vict.,
c. 67.

In exercise of the power vested in him by the said section, [His Excellency]† the Governor General is pleased to make and promulgate the following Ordinance :—

[Here follows the Ordinance.‡]

NO. 14 §

Proclamation establishing new local Legislative Council.

The following proclamation, to which the sanction of Her Majesty the Queen, Empress of India, has been signified by the Secretary of State in Council, as required by section 49 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67)§, is hereby published :—

PROCLAMATION.

The Governor General is pleased to constitute the territories at present under the administration of the

to be, for the purposes of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67)¶, a province to which the provisions of that Act touching the making of laws and regulations for the peace and good government of the Presidencies of Fort St. George and Bombay shall be applicable, and further to appoint

to be the first Lieutenant-Governor of that province, with all powers and authority incident to such office.

2. The Governor General in Council is further pleased to specify the day of , 189 , as the period at which the said provisions shall take effect, and as the number of Councillors whom the Lieutenant-Governor may

* See *ante*, p. 18.

† Titles of courtesy are more properly omitted in statutory notifications.

‡ Ordinance made on the 29th February, 1876,—see *Gazette of India*, 1876, Pt. I, p. 119. It expired in due course, and general provisions on the subject were subsequently enacted by the Dramatic Performances Act, 1876 (XIX of 1876).

§ Cf. Home Department's Notification No. 509, dated the 9th April, 1897, *Gazette of India*, 1897, Pt. I, p. 261.

¶ See *ante*, p. 23.

¶ See s. 46 of the Indian Councils Act, 1861, *ante*, p. 22.

nominate for his assistance in making laws and regulations.

Y. Z,

Secretary to the Government of India.

NO. 15.*

Notification publishing a Regulation made under the Government of India Act, 1870.

Whereas by Resolution passed by the Secretary of State for India in Council on the _____ day of 18____, the provisions of section 1 of the Government of India Act, 1870 (33 Vict., c. 3)†, were declared applicable to the territories under the administration of the Governor of A. in Council ; Lieutenant-Governor of B. ; Chief Commissioner of C. ;

And whereas the said ^{Governor of A. in Council} ^{Lieutenant-Governor of B.} ^{Chief Commissioner of C.} has proposed to the Governor General in Council a draft of the following Regulation, together with the reasons for proposing the same ;

And whereas the Governor General in Council has taken the draft and reasons into consideration, and has approved of the draft, and the same has received the assent of the Governor General on the _____ day of 189____ ;

In pursuance of the direction contained in the said section, the said Regulation is now published in the Gazette of India :

REGULATION NO. _____ OF 189____.

[Here follows the Regulation.]

Y. Z.,

Secretary to the Government of India.

NO. 16 ‡

Report of Select Committee.

The following Report of the Select Committee on the Bill to _____ was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the _____, 189____ :—

* Cf. Regulation III of 1898, *Gazette of India*, 1898, Pt. I, p. 776; also *Burma Gazette*, 1898, Pt. II, pp. 405—406. The Statute requires publication in both the *Gazette of India* and the local official *Gazette*—see *ante*, pp. 41 and 42n.

† See *ante*, p. 41.

‡ See rule 25 of the Rules of Legislative Business, *ante*, pp. 83—84. Cf. *Gazette of India*, 1898, Pt. V, p. 269.

WE, the undersigned, Members of the Select Committee to which the Bill to

* * * * *

Here describe in order the Papers to the Bill.

was referred, have considered the Bill and the papers noted in the margin, and have now Report, with the Bill, as

the honour to submit this our amended by us, annexed thereto.

* * *
* * *
* * *

The publication ordered by the Council has been made as follows* :—

In English.

<i>Gazette.</i>		<i>Date.</i>	
Gazette of India ...	...	, 189	.
Gazette ...	...	, 189	.
* *	* *	*	*

In the Vernaculars.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>	
Bengal ...	{ Bengali ...	, 189	.
	{ Hindi ...	, 189	.
* *	* *	*	*
* *	* *	*	*

We [do not] think that the measure has been so altered as to require re-publication, [and we recommend that it be passed as now amended].†

A. B.‡
C. D.
E. F.
G. H.

The , 189 .

[Here follows the Bill as amended.]

Y. Z.,

Secretary to the Government of India.

* See rule 25 of the *Rules of Legislative Business*, para. 4, *ante*, p. 83.

† See *ibid.*

‡ The practice is for the Member in charge of the Bill to sign first and for the other Members of the Select Committee to sign next in order of precedence.

No. 17.*

Journal of Proceedings of Governor General's Legislative Council.

Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14).

The Council met at the Viceregal Lodge, Simla, on Friday, the 12th August, 1898.

PRESENT:

His Excellency the Earl of Elgin, P.C., G.M.S.I., G.M.I.E., LL.D., Viceroy and Governor General of India, *presiding*.

His Excellency General Sir C. E. Nairne, K.C.B., R.A., Provisional Commander-in-Chief in India.

The Hon'ble Sir J. Westland, K.C.S.I.

The Hon'ble M. D. Chalmers.

The Hon'ble Major-General Sir E. H. H. Collen, K.C.I.E., C.B.

The Hon'ble Sir A. C. Trevor, K.C.S.I.

The Hon'ble C. M. Rivaz, C.S.I.

The Hon'ble Rai Bahadur Pandit Suraj Kaul, C.I.E.

The Hon'ble MR. RIVAZ moved that the Hon'ble Mr. Fuller be added to the Select Committees on the Bill to consolidate and amend the law relating to Agricultural Tenancies in the Central Provinces and the Bill to further amend the Central Provinces Land-revenue Act, 1881.

The motion was put and agreed to.

The Hon'ble MR. RIVAZ moved that the Bill to make better provision for the regulation of the importation of live-stock be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. RIVAZ moved that the Bill be passed.

The motion was put and agreed to.†

The Council adjourned to Friday, the 2nd September, 1898.

ELGIN.

* See rule 36 of the *Rules of Legislative Business*, ante, p. 86.

† See the Live-stock Importation Act, 1898 (IX of 1898).

NO. 18.*

Full Report of Proceedings of Governor General's Legislative Council.

Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14).

The Council met at the Viceregal Lodge Simla, on Friday, the 12th August, 1898.

PRESENT:

His Excellency the Earl of Elgin, P.C., G.M.S.I., G.M.I.R., LL.D., Viceroy and Governor General of India, *presiding*.

His Excellency General Sir C. E. Nairne, K.C.B., R.A., Provisional† Commander-in-Chief in India.

The Hon'ble Sir J. Westland, K.C.S.I.

The Hon'ble M. D. Chalmers.

The Hon'ble Major-General Sir E. H. H. Collen, K.C.I.E., C.B.

The Hon'ble Sir A. C. Trevor, K.C.S.I.

The Hon'ble C. M. Rivaz, C.S.I.

The Hon'ble Rai Bahadur Pandit Suraj Kaul, C.I.E.

CENTRAL PROVINCES TENANCY AND LAND-REVENUE ACT AMENDMENT BILLS.

The Hon'ble MR. RIVAZ moved that the Hon'ble Mr. Fuller be added to the Select Committees on the Bill to consolidate and amend the law relating to Agricultural Tenancies in the Central Provinces and the Bill to further amend the Central Provinces Land-revenue Act, 1881.

The motion was put and agreed to.

LIVE-STOCK IMPORTATION BILL.

The Hon'ble MR. RIVAZ moved that the Bill to make better provision for the regulation of the importation of live-stock be taken into consideration. He said:—"As I stated in introducing the Bill on the 15th July, the proposed Act is of a very general nature, and entirely an empowering one. Whatever restrictions and prohibitions are prescribed will be dealt with by rules and notifications under the Act, which can be altered from time to time if necessary; and before such restrictions or prohibitions are brought into force, all due consideration will of course be paid to the trade interests involved in the importation of horses."

* See rule 37 of the *Rules of Legislative Business*, ante, p. 86, and *Gazette of India*, 1898, Pt. VI, p. 363. This "full report" corresponds with the "journal" reproduced on the preceding page.

† The word "Provisional" should, perhaps, have been omitted.

The motion was put and agreed to.
 The Hon'ble MR. RIVAZ moved that the Bill be passed
 The motion was put and agreed to.*
 The Council adjourned to Friday, the 2nd September,
 1898.

J. M. MACPHERSON,
*Secretary to the Government of India,
 Legislative Department.*

SIMLA;

The 12th August, 1898.

No. 19.

*Statement regarding the translation and publication by
 Local Governments of the Acts of the Governor Gen-
 eral's Legislative Council.*

NOS. 1421-1431.

FROM—H. W. C. CARNDUFF, ESQ., I.C.S.,
Deputy Secretary to the Government of India,
 LEGISLATIVE DEPARTMENT,
 To—LOCAL GOVERNMENTS AND ADMINISTRATIONS.

Simla, the 16th August, 1897.

SIR,

I am directed to request that the half-yearly state-
 ments required for the purpose of shewing when transla-
 tions of Acts of the Governor General in Council are pub-
 lished and made available for use by Government officials
 and the public may be submitted in future in the accom-
 panying form.

2. It is unnecessary to refer in such statements to
 translations of modified editions of Acts.

*Statement showing the dates on which translations of the
 Acts of the Governor General in Council affecting
 which were passed during the six months
 ending on the , 189 , were published and
 became available for use by Government officials and
 the public.*

Year.	No.	Short title or subject.	Dates of publication of translations in local official Gazette.	Dates on which translations were made available for use by Government officers and for sale.	REMARKS.

* See the Live-stock Importation Act, 1898 (IX of 1898).

- NO. 20.*

List of Business pending in Governor General's Legislative Council.

Concise Statement showing Stage of each Bill introduced in Council and Bills for which instructions have been received.

(N.B.—The numbers in Column I correspond with the numbers in Column I of the Statement of Legislative Work pending, which should be referred to for details.)

Serial No.	Title of Bill.	Stage at which Bill is.
<i>Bills introduced in Council—</i>		
•	• • • • •	• • • • •
10	Indian Stamp Bill ...	To be passed.
•	• • • • •	• • • • •
<i>Bills for the preparation of which instructions have been received.</i>		
•	• • • • •	• • • • •
18	Cantonments (House-Accommodation) Bill.	Bill in type. File sent to Military Department on the , 1898.
•	• • • • •	• • • • •

* See rule 38 (4) of the *Rules of Legislative Business*, ante, p. 87.

Statement of Legis
PART
Bills introduced

Serial No.	Title of Bill.	Leave given to introduce	Introduced.	Referred to Select Committee.	Members of Select Committee.	Circulated for opinion.	To WHOM SENT.		Opinions when due.
							For opinion and publication.	For opinion only.	
10	To consolidate and amend the Law relating to Stamps.	15th October, 1897.	15th October, 1897.	21st January 1898.	Hon'ble Sir J Westland, Hon'ble Mr. Chalmers, Hon'ble Joy Gobind Law, and Hon'ble Messrs James Nicholson and Allan Arthur.	16th October, 1897.	Madras	...	1st January, 1898.
							Bombay	...	
							Bengal	...	
							North-Western Provinces and Oudh.	...	
							Punjab	...	
							Burma	...	
							Central Provinces.	...	
							Assam ...	...
							Coorg ...	...
							Ajmere..	...	
							British Baluchistan.	...	
							Hyderabad.	...	
							High Court, Calcutta	...	

lative Work pending.

I.

in Council.

Opinion received from whom and on what date.	PUBLISHED.		Takesds for opinion	Takesds for publication.	Reference to Executive Department.	Meetings of Select Committee.	Correspondence with Secretary of State.	REMARKS.
	In English	In Vernacular.						
Madras, 3rd and 23th February, 1898.	Madras, 16th November, 1897.	Tamil Telugu Kanarese Malayalam. Hindustani	7th January 1898. 17th February, 1898.	...	...	21st, 22nd, 23rd and 26th February, and 21st March, 1898.	To Secretary of State, No. 33, dated 21st October, 1897. To Secretary of State, No. 10, dated 21th March, 1898.	Sir J. Westland in charge Report of Select Committee presented on 21st March, 1898.
Bombay, 24th February, 1898.	Bombay, 3th November, 1897.	Ma athi Gujarathi	14th December, 1897. 20th January 1898.					
Bengal, 28th February, 1898.	Sind, 31st November, 1897.	Kanarese Sindhi						
North-Western Provinces and Oudh, 24th January, 1898.								
Punjab, 17th January, 1898.								
Burma, 31st December, 1897, and 11th January, 1898.	Calcutta, 3rd November, 1897.	Bengali Hindi Urdu, 27th January, 1898.	8-1-98.					
Central Provinces, 3rd January, 1898.	North Western Provinces and Oudh, 30th October, 1897.	...						
Assam, 25th January, 1898.	Punjab, 28th October, 1897.	Urdu, 16th December, 1897.						
Coorg, 31st December, 1898.	Burma, 13th November, 1897.	Burmese, 11th December, 1897.						
Ajmere, 14th January, 1898.	...	...				
British Baluchistan, 20th December, 1897.	Central Provinces, 30th October, 1897.	...						
Hyderabad, 2nd March, 1898.	Assam, 13th November, 1897.	Bengali, 29th January, 1898.						
High Court, 10th January, 1898.	Coorg, 1st November, 1897.	Kanarese, 1st January, 1898.						

PART II.

*Bills for the introduction of which leave has been given.**

Serial No.	Title of Bill.	Date of publication.	REMARKS.

PART III.

Bills published by order of the Governor General under rule 23 of the Rules of Legislative Business.†

Serial No.	Title of Bill.	Date of publication.	REMARKS.

* See rule 16 of the *Rules of Legislative Business*, ante, p. 81.

† See ante, p. 83.

PART IV.

Bills for the preparation of which instructions have been received.

Serial No.	Title of Bill.	From what Department.	Date of receipt.	REMARKS.
.
.
.
18	Cantonments (House - Accommodation) Bill.	Military Department.	7th January, 1897.	Bill in type. Under discussion in Executive Department.
.
.
.

Leading Indian case on legislative powers of Governor General in Council.

5. The power of the Governor General's Council to legislate so as to affect the jurisdiction of any of the Chartered High Courts is, therefore, complete, and the decision of the Privy Council in 1878 in *Empress v. Burah* (1 L. R. 4 Cal. 172; 1 C. L. R. 197) has removed all doubt as to the extent and nature of that power. The following extracts from the judgment delivered by Lord Selborne in that case are worth reproducing:—

"Now it appears to their Lordships, from the express terms of the Act 24 & 25 Vict., c. 104, that (unless there should be anything to the contrary in the Letters Patent under which the High Court is established) the exercise of jurisdiction in any part of Her Majesty's Indian territories by the High Courts was meant to be subject to, and not exclusive of, the general legislative power of the Governor General in Council as to 'all Courts of Justice whatever'.

"The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary power of legislation, as large, and of the same nature, as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions.

"Where plenary powers of legislation exist as to particular subjects, whether in an Imperial or in a Provincial Legislature, they may (in their Lordship's judgment) be well exercised either absolutely or conditionally. Legislation, conditional on the use of particular powers or on the exercise of a limited discretion entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing; and, in many circumstances, it may be highly convenient. The British Statute-book abounds with examples of it: and it cannot be supposed that the Imperial Parliament did not, when constituting the Indian Legislature, contemplate this kind of conditional legislation as within the scope of the legislative powers which it from time to time conferred. It certainly used no words to exclude it."

Chartered High Courts' superintendence.

6. Section 15 of the Indian High Courts Act, 1861, gives each of the Chartered High Courts—

"superintendence over all Courts which may be subject to its appellate jurisdiction."

Chartered High Courts' appellate powers.

7. Section 16 of the Letters Patent of 1865 ordains that the High Court—

"shall be a Court of appeal from the Civil Courts of the * * * Presidency * * * and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force."

Restriction on local legislatures.

9. Section 42 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67),* debars the local legislature of any Presidency from—

* See ante, p. 19

"making any laws or regulations which shall in any way affect any of the provisions of this Act, or of any other Act of Parliament in force or hereafter to be in force in such Presidency."

But, by section 5 of the Indian Councils Act, 1892 (55 & 56 Vict., c. 14),*—

"the local legislature of any province in India may, from time to time, by Acts passed under and subject to the provisions of the Indian Councils Act, 1861, and with the previous sanction of the Governor General, but not otherwise, repeal or amend as to that province any law or regulation made either before or after the passing of this Act by any authority in India other than that local legislature."

10. It has been argued† that section 16 of the Letters Patent above quoted gives a right of appeal to the High Court, say, at Fort William, from every decision or order passed under any law whatsoever in force by any Court in the Lower Provinces, whether such law expressly provides such an appeal or not, and however such latter Court may have been established. Thus, when the Governor General's Legislative Council, by passing the Bengal Tenancy Act, 1885 (VIII of 1885), constituted the Court of a Special Judge to hear appeals from the decisions of Revenue-officers, a second appeal would, in the absence of an express provision to the contrary, lie to the Calcutta High Court from every appellate order of a Special Judge. The Act of 1885, s. 108, in terms allows such a second appeal only in certain cases; but if that section were repealed, an appeal would lie in all cases, and it would be beyond the competence of the Bengal Council to limit that appeal by re-enacting the provisions of the section.

Agreement as to general right of appeal to Chartered High Court.

11. Now, the accepted principle seems to be—see Wilberforce's *Statute Law*, at p. 43—that there is never a right of appeal from an order passed in exercise of a statutory power unless such right is *expressly* conferred, and that such right cannot be conferred indirectly or by mere implication. And there appears to be very high authority in support of this view.

No right of appeal unless expressly conferred.

12. In *The King v. Hanson* (1821), 4 B. & Ald., at p. 521, Abbott, C. J., afterwards Lord Tenterden, said:—

Leading English cases.

"The rule of law is, that, although a certiorari lies unless expressly taken away, yet an appeal does not lie, unless expressly given by statute."

This decision was relied upon by the learned Judges in *The Queen v. Stock* (1838) 8 A. & E. 405. In this case one Statute took power to issue an order in the form and the manner prescribed by another Statute. The other Statute referred to contained a schedule which gave a form stating that the order contemplated by it should be "enrolled at sessions, unless upon an appeal against the same to be then made, it be otherwise determined"; and the third section expressly provided an appeal from orders made under it. It was held that the one Statute, although

* See *ante*, p. 38.

† By the Bengal Government and Advocate General in connection with the Bill for the amendment of Act VIII of 1885, introduced in the Bengal Council in 1898.

it incorporated the form of notice in the other, did not thereby give a right of appeal, because a right of appeal cannot be given by implication. Lord Denman, C. J., in giving his opinion, said :—

“The reason why a power of appeal ought not to be implied is, that the appeal brings a new set of parties into action, and it is necessary that the persons to be affected and the machinery to be employed should be distinctly pointed out.”

Littledale, J., followed, accepting the dictum in *The King v. Hanson*; Patterson, J., referred to that dictum as “clear law”; and Williams, J., said :—

“There are innumerable instances where an appeal is given in terms; but no case has been mentioned in which it has been given by implication.”

In *Attorney-General v. Sillem* (1864), 10 H. L. Cas. 704, 10 Jur. N. S. 446, and 10 L. T. 434, the House of Lords held that the creation of a new right of appeal required legislative authority, and that neither the inferior nor the superior tribunal, nor both combined, could create such a right, it being essentially one of the limitation and of the extension of jurisdiction. Lord Chancellor Westbury expressed himself almost in these terms, and Lord St. Leonards said :—

“It is clearly laid down that no right of appeal can be given except by express words;”

but added that, “to create such a right, it is not necessary to use the word ‘appeal,’ but some clear equivalent term must be used.” Lord Cranworth and Lord Wensleydale were less decided, but the latter remarked that the authorities amounted to this,—

“that an appeal cannot be given by implication, which is, in truth, that, however much you may be satisfied that the Legislature must have intended to give it, it is not enough unless there are words to give it.”

Conclusion as
to general
right of ap-
peal.

13. In view of this principle, it would seem that section 16 of the Letters Patent is not, *per se*, sufficient to give the universal right of appeal claimed, and that all that it does is to make the High Court a Court of Appeal in every case which was in 1865 expressly declared by law to be subject to appeal to it. How the High Court can claim to be, by virtue of that provision alone, a Court of Appeal from the decisions of a Court not in existence till thirty years later, it is difficult to understand.

Meaning of
“affect” in
Indian Coun-
cils Act, 1861.

14. Again, the opinion has been expressed* that, while, as is clear, the Governor General’s Council can extend (as well as limit) the jurisdiction of a Chartered High Court, no local legislature can either extend or limit it. The word “affect” in section 42 of the Statute of 1861† has, however, been construed to mean “affect in *malam partem*,” and a little reflection will show that any other construction would lead to absurd results. There are many Acts of Parliament passed since

* See footnote to paragraph 10, *ante*.

† See *ante*, p. 19; and *cf.* s. 22 of the Statute of 1861 and the note thereto, *ante*, pp. 12—13.

the Indian Councils Act, 1861, which apply to the whole of Her Majesty's dominions, and, if a narrower construction were put upon the words, the functions of the Indian Legislature would be circumscribed to an extent which cannot possibly have been intended. It is believed, then, that there is nothing to prevent a local legislature from conferring extended jurisdiction on a Chartered High Court.

15. Next, it would seem* that a local legislature, with the previous sanction of the Governor General given under section 5 of the Statute of 1892,† is competent to take away from a Chartered High Court jurisdiction which it had not when the Indian Councils Act of 1861 was passed, and which has since been conferred upon it by an Act of the Governor General's Council. Thus, the Bengal Council is competent, with the Governor General's previous sanction, to repeal section 108 (2) of the Bengal Tenancy Act, 1885.

Local legislature may affect jurisdiction conferred by Indian legislation.

16. The general question of the limits of the power of a local legislature to affect the jurisdiction of a Chartered High Court has been discussed in several leading cases. In *Premshankar Raghunathji v. Government of Bombay* (1870), 8 Bom. H. C. Rep., A. C. J., at p. 109, it was argued that the local legislature could not pass Bombay Act VII of 1863, because it affected the jurisdiction of the High Court on its Appellate Side, which could withdraw suits from the Mufassal Courts, and to which in most cases there was a right of appeal. The following extracts are taken from the judgment of the Court (Westropp, C. J., and West, J.) :—

Leading Indian cases on powers of local legislatures.

The authorities cited "afford no effective support to the conclusion that the local legislature is debarred, by the mere circumstance of its dependence, from making laws for the Mufassal Courts subsisting, not by any charter from the Crown, but by the creation and protection of the Local Government itself. A dependent Government can make laws for all purposes, consistent with the laws of the dominant country applicable to the dependency. * * *

It cannot be said that the regulation of the Civil Courts and their powers is not an element of the 'peace and good government of this Presidency'; and, when the Local Government found it consistent with its policy to limit the powers of the Civil Courts in the case of service lands, it was quite within its competence to make such modifications of the laws previously in force as were necessary for that purpose. It was pressed on us, indeed, that the High Court could withdraw to itself civil suits instituted in the Mufassal Courts if it saw fit; that an appeal to it lies in all cases tried originally by a District Judge; and that thus the Act of the Bombay Legislature (putting the District Judge's interpretation on its clauses) goes directly to deprive the High Court of a jurisdiction conferred on it by the Statute and Letters Patent constituting the Court; and in one sense there is some force in this argument. The Act, no doubt, removes the possibility of some contingencies arising, on the happening of which this Court might exercise its powers on the Original Side or in hearing the appeal. But we do not think that this operation of the Act can reasonably be held to affect the provisions of the Statute constituting

* See footnote to paragraph 10, *ante*.

† See *ante*, p. 38.

the High Court in the sense intended by the Legislature. Every ordinary law passed by the Governor in Council, if it is to be effectual, must be made by some sanction. That sanction must be enforced by the Courts subject to the appellate and superintending authority of the High Court. Thus, the passing of such a law necessarily adds to the jurisdiction of this Court in the sense of the number of subjects to which its judicial authority may possibly be extended. Conversely, every repealing Act diminishes its jurisdiction in a similar sense. Are the Acts, therefore, void? Such a conclusion, completely paralysing the local legislature, would obviously defeat, not promote, the purposes of the Imperial Parliament. The provisions of the Statute must plainly receive a more liberal construction—one liberal enough to admit of a local legislature extending or restricting the powers of the Courts, its own creatures, even though the possible occasions for the exercise of this Court's jurisdiction may thus indirectly be increased or diminished in number."

Again, in *The Collector of Thana v. Bháskar Mdkádev Sheth*, I. L. R. 8 Bom. 264, the Bombay High Court (West and Nánábhái Haridas, JJ.) said:—

"The objection that the Bombay Government could not legislate so as to bind this Court by a certificate of a Collector under section 10 of Bombay Act III of 1874, is in one sense valid, while in another it is not. The jurisdiction of the High Court rests on the Statute 24 & 25 Vict., c. 104, and the Letters Patent issued under that Statute. The legislative power of the Local Government rests on 23 & 24 Vict., c. 67, sections 42 and 43.* Under these it cannot interfere with any Act of Parliament. The Statute constituting this High Court and the Letters Patent give to the Court such jurisdiction as was possessed by the late Supreme and Sadr Courts, together with a general power of appeal and superintendence over the Civil Courts of the Presidency of Bombay.† Any Act, therefore, of the local Legislature which should propose to cut down this jurisdiction would so far be *ultra vires* and inoperative.

"But, then, it is to be remembered that this restriction of the one authority by the other relates only to matters of jurisdiction—that is, of the exercise of the judicial functions and matters ancillary to this. Granting the existence of any particular law, the mode in which it is to be interpreted, the jural relations it creates, the duties it imposes, and the way in which these are to be enforced,—all such questions have to be determined by the High Court, and any attempt by the local legislature to control it in the exercise of those functions would be simply abortive. But a different proposition is stated when it is said that, because in a given state of the law this Court may establish particular relations and issue particular commands which must be obeyed, that state of the law cannot be altered because the range of operation of the Court's powers will be altered at the same time. Such a construction of the Statutes, as pointed out in the case of *Premshankar Raghunathji v. The Government of Bombay*,‡ would make legislation by the Local Government virtually impossible. It is plain on reflection that jurisdiction relates to authority in ascertaining and giving effect to the law as it is; and as the substantive law changes, while the jurisdictional power remains constant, the actual result must be variable. Thus, legislation on the rights and obligations of its subjects by the Bombay Government in no way necessarily infringes on the authority of the High Court, unless the powers of the latter in dealing with the law, when made, are in some way affected. This Court, in exercising its appellate jurisdiction, is bound to administer the law as it subsists in the subordinate Courts."

* See *ante*, pp. 19 and 20.

† A footnote here refers to "Let. Pat. cl. 16. Stat. 24 & 25 Vict., c. 104, sections 9, 15."

‡ 8 Bom. H. C. Rep., A. C. J., 195, *above cited*.

17. As regards local legislatures, Sir Courtenay Ilbert, Sir C. Ilbert's in a note, dated the 3rd February, 1882,* thus summed up ^{Summary.} the position :—

“ I think it may be taken as settled—

- (a) that a local legislature cannot take away any of the jurisdictions conferred on a High Court by the High Courts Act and the Letters Patent ;
- (b) that an Act which merely ‘ removes the possibility of some contingencies arising, on the happening of which ’ a High Court ‘ might exercise its powers on the Original Side or in hearing the appeal ’, in other words, which merely affects the extraordinary or appellate jurisdiction of the High Court, ought not to be construed as taking away any of the jurisdictions of the High Court. On this point, I would accept the decision of the Bombay High Court (8 Bom. H. C. R. A. C., p. 195) as laying down a reasonable and convenient rule ;
- (c) that a local legislature may deal freely with the jurisdiction of the Mufassal Courts, so far as that jurisdiction rests on an Act of the Governor General in Council passed before the Councils Act, or on an Act of the local legislature ;
- (d) that a local legislature cannot repeal or alter an Act of the Governor General in Council passed since the Councils Act.”

The last two clauses of this opinion must, of course, now be modified in the light of section 5 of the Indian Councils Act, 1892 (55 & 56 Vict., c. 14),† which empowers the local legislature of any province, with the previous sanction of the Governor General, to repeal or amend as to that province *any law or regulation made either before or after the passing of that Statute.*

18. Finally, the difficulty connected with interference with the jurisdiction of the Chartered High Courts may, Mr. Arthur Phillips advised and Sir A. Hobhouse appears to have agreed, be got over by the simple device of using words to bar the right to bring a suit instead of the right to entertain and dispose of a suit when brought. See Legislative Department's A. Pros., May, 1877, Nos. 89 to 97, K.-W. In this connection, Sir C. Ilbert, in paragraph 6 of his note above quoted, says :—

“ Wherever a local Bill or Act is capable of being construed as merely taking away a right of suit generally, I would not object to it on the ground that it interferes with a jurisdiction established by a paramount authority.”

H W. C. C.,—11-3-98.

* See Legislative Department's A. Pros., Feb., 1888, Nos. 126 to 133, K.-W.

† See *ante*, p. 38.

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